

1 (February 9, 2005, 9:23 a.m.)

2 THE COURT: Good morning. I hope everyone is well.
3 I had the opportunity to meet with counsel in chambers briefly,
4 at which time everyone indicated they're refreshed, renewed and
5 ready to move forward.

6 Let me, first of all, put on the record something that
7 I've already discussed with the lawyers, and that is in regards
8 to the Court's ruling on the defendants' Rule 29 motion for
9 judgment of acquittal. I am reversing myself to this extent.
10 I am going to reserve ruling on all of the Clean Water Act
11 counts. And any counts that I've granted judgment of acquittal
12 on heretofore, I have reversed myself in that regard and I will
13 reserve ruling.

14 I do so because, as Mr. Korzenik pointed out, that would
15 not be appealable. And I am not so naive -- I've pointed out
16 to the lawyers in chambers, I'm not so naive that I would
17 believe that I am infallible. I could be in error. And if I
18 am in error, I should be corrected. And the only way to
19 preserve that would be to take the matter -- reserve ruling on
20 the Rule 29 motion and allow the case to go forward to the jury
21 with proper instructions.

22 All right. Any questions? Mr. Wittman?

23 MR. WITTMAN: No, Your Honor. It's not a question
24 really. But I think just for the sake of the record and so
25 that I preserve our rights, I think that with respect to the

1 Court's ruling on Thursday on Counts 30, 31, 32, 33, 34 and 35,
2 I do believe that Your Honor's ruling does constitute a
3 dismissal of those counts on the record. And I would suggest
4 that our clients cannot continue to be tried under those counts
5 without being twice placed in jeopardy. And for that reason,
6 Your Honor, we would object to the Court's ruling. But that's
7 the only thing I have to say about it.

8 THE COURT: I considered the possibility of that
9 objection. I presume that the rest of the defendants join in
10 that objection as well.

11 MR. TIMOTHY HOLLEMAN: Yes, sir, Your Honor.

12 MR. HOLDER: Yes, Your Honor.

13 THE COURT: But I note that there has been no
14 evidence presented by the defendants yet and that nothing has
15 occurred since the motion was ruled on. And I think I had
16 pointed out in chambers that it's not that I have -- it's not
17 that I have been inspired over the weekend by the government's
18 theory of the case. Instead, it's more along the lines of
19 preserving the matter for review. And I think that the
20 government is entitled to that opportunity in the event that I
21 am in error.

22 All right. Anything else on behalf of the defendants?

23 MR. WITTMAN: No, Your Honor.

24 THE COURT: Anything else on behalf of the
25 government?

1 MR. KORZENIK: No, Your Honor.

2 THE COURT: All right. Then I presume we're ready to
3 proceed? Please ask the jury to join us.

4 (Jury in at 9:28 a.m.)

5 THE COURT: Good morning, ladies and gentlemen. I
6 met briefly with the attorneys in chambers this morning, and I
7 think the consensus of the group was they were refreshed and
8 renewed and ready to move forward. I presume that the jury is
9 likewise refreshed and renewed. Long time no see. It's good
10 to have you back.

11 We made some changes in the jury room to try to make it a
12 little more homier, I guess would be the word for it. Hung
13 some pictures and moved some things around. It's always nice
14 when the judge gets in there with a laser level and levels up
15 all the pictures and puts them up. But we had a great deal of
16 help from the staff as well. And I hope that you enjoyed the
17 surroundings. We're still moving in. And we're getting better
18 at it every day.

19 The parties have indicated that they are ready to move
20 forward. So Mr. Wittman, you may call your first witness.

21 MR. WITTMAN: Thank you, Your Honor. The defense
22 calls Mr. James Palmer as its first witness.

23 THE COURT: Mr. Palmer, would you stand and be sworn,
24 sir.

25 JAMES PALMER

1 was thereupon called as an adverse witness for and on behalf of
2 the defendoant and, having been duly sworn, testified as
3 follows:

4 DIRECT EXAMINATION:

5 BY MR. WITTMAN:

6 Q. Mr. Palmer, I'm gonna ask you to lean forward and get
7 closer to that microphone so everyone can hear you. And tell
8 us, please, your full name.

9 A. James I. Palmer, Jr.

10 Q. And where do you live, sir?

11 A. My residence address is 4772 Chatuge, which is spelled
12 C-H-A-T-U-G-E, Lane in Douglasville, Georgia. The zip is
13 30135.

14 Q. And what is your current employment?

15 A. I am the regional administrator for Region 4 of the United
16 States Environmental Protection Agency. The regional office is
17 in Atlanta, Georgia.

18 Q. Are you here in your official capacity, Mr. Palmer?

19 A. No, sir. I am here under subpoena. I am on annual leave
20 today because the events surrounding my involvement in this
21 matter all preceded my appointment as EPA regional
22 administrator. And because of that, my testimony today may not
23 be construed in any way as any official statement or position
24 of U.S. EPA. I am strictly here in my personal capacity.

25 Q. And as you say, you were subpoenaed by the defendants to

1 be here this morning, correct?

2 A. I was.

3 Q. How long have you served as regional administrator of the
4 Environmental Protection Agency Region 4?

5 A. My appointment was announced on the 18th of October, as U
6 recall, in 2001. I was sworn in the first business day of
7 January in 2002.

8 Q. And Region 4 of the Environmental Protection Agency is
9 responsible for what region of the country?--

10 A. It's the southeastern region. There are eight states --
11 there are ten EPA regions. Region 4 covers eight states --
12 Mississippi, Alabama, Tennessee, Kentucky, Georgia, North
13 Carolina, South Carolina and Florida.

14 Q. Would you tell the jury a little bit about your
15 educational background starting with your graduation from
16 college?

17 A. I received my Bachelor of Science degree in civil
18 engineering from Mississippi State University in 1970. After
19 working for four years, I then went to the University of
20 Mississippi law school. Graduated there in December of 1976.

21 Q. Okay. After you graduated from the Ole Miss law school,
22 did you practice law here in Mississippi?

23 A. I did. I practiced law with a Jackson law firm but lived
24 in Newton, Mississippi, for three years before then going back
25 into state service, where I had been before I went to law

1 school. And I then went to the Attorney General's office in
2 early February of 1980.

3 Q. How long did you remain in the Attorney General's office?

4 A. A little over four years. I then moved with the Attorney
5 General to the governor's staff and served as staff counsel and
6 administrative assistant until about the Summer of 1986 when I
7 was appointed executive director of the governor's office of
8 general services. And then in September of 1987 was appointed
9 executive director of what was then the Mississippi Department
10 of Natural Resources, now the Mississippi Department of
11 Environmental Quality.

12 Q. What did you do while you were at the MDEQ?

13 A. Well, as executive director of the agency that I had
14 formerly served as legal counsel for, I was responsible for the
15 administration and enforcement of a variety of both federal and
16 state environmental laws. One section of the agency
17 essentially was the environmental unit that had been the air
18 and water pollution control commission. Another unit in the
19 agency was the former state geological survey. Another unit
20 was the former state parks commission. And another unit was
21 the former board of water commissioners. All of which had been
22 folded into this agency in about 1978.

23 Q. And how long did you remain in the MDEQ?

24 A. I took my state retirement effective January 1st of 2000.
25 I was there as executive director for about 12 and a quarter

1 years.

2 Q. What did you do when you left your employment with the
3 MDEQ?

4 A. I went back into private law practice with the firm
5 Butler, Snow, O'Mara Stevens & Cannada in Jackson.

6 Q. When you joined the Butler, Snow firm or after you joined
7 the Butler, Snow firm, did you specialize in any particular
8 area of the practice of law?

9 A. I did. Because my work in state service had focused
10 principally on the environmental field, then when I went back
11 into private law practice, I essentially limited my practice to
12 environmental matters.

13 Q. And when you were practicing law in the Butler, Snow firm,
14 did you have occasion to represent Robert Lucas?

15 A. I did. Mr. Lucas and Dr. Beall -- Robert Beall came to
16 the firm, and the firm agreed to provide representation to
17 these gentlemen and to their two corporations, Big Hill Acres,
18 Incorporated, and Consolidated Investments, Incorporated.

19 Q. Okay. I'm gonna show you what has been marked for
20 identification as Defendants' Exhibit 810.

21 MR. WITTMAN: May I approach, Your Honor?

22 THE COURT: You may.

23 BY MR. WITTMAN:

24 Q. Do you recognize this document?

25 A. Yes.

1 Q. What is it?

2 A. It is a copy of the April 20, 2000, letter that I wrote to
3 Dr. Beall and to Mr. Lucas on behalf of the firm advising them
4 that we were accepting representation of these gentlemen and
5 their corporations. This was what the firm and what all firms
6 would call an engagement letter.

7 MR. WITTMAN: Your Honor, I offer into evidence
8 Defendants' Exhibit 810.

9 THE COURT: Any objection?

10 MS. HARRIS: Your Honor, my question is whether it's
11 relevant to his testimony.

12 THE COURT: Do you object to it then?

13 MS. HARRIS: Yes, I do. I haven't even had a
14 chance --

15 THE COURT: All right.

16 MS. HARRIS: -- to finish reading it. It's three
17 pages.

18 THE COURT: What does it do, Mr. Wittman, other than
19 to bolster the proposition that the firm did accept
20 representation?

21 MR. WITTMAN: Your Honor, it represents -- not only
22 that, but it also represents his initial evaluation of a
23 situation until he was retained his counsel.

24 THE COURT: Could he not simply testify to that?

25 MR. WITTMAN: I'm sure he could.

1 THE COURT: Objection is sustained.

2 BY MR. WITTMAN:

3 Q. When you first undertook to represent Mr. Lucas and
4 Dr. Beall, did you observe any collateral issues relating to
5 the manner in which business had been done in the past and what
6 needed to be done in the future insofar as they were concerned?

7 A. Yes.

8 Q. And tell the ladies and gentlemen of the jury what you
9 observed in that regard.

10 A. Dr. Beall and Mr. Lucas came to our firm principally
11 because of wetlands issues that had arisen in the context of
12 their real estate developments in Jackson County. But as they
13 explained the full picture of what was going on at that point
14 in the development, it also became clear that there were issues
15 involving wastewater and water systems infrastructure
16 principally that was in place to service the parcels that were
17 being sold. So we -- we then tried to understand all of the
18 parties involved and the relative rights and responsibilities
19 and obligations of all those parties.

20 Q. Did you review what had happened in the past at Big Hill
21 Acres and with Mr. Lucas and Dr. Beall regarding their
22 relationship with regulatory authorities?

23 A. We did. We asked them to bring us current on what had
24 been happening, how long it had been happening, who the
25 regulatory parties were with whom they had been engaged and

1 essentially what the status of the matters were at that time.

2 Q. Did you become familiar with the land sales contracts that
3 were in use by Big Hill Acres at that time?

4 A. We did. We asked them to give us copies of the
5 transactional documents that they were using, and we did review
6 those.

7 Q. Did you ever advise Mr. Lucas that Big Hill Acres should
8 use a different contract for the sale of lots at Big Hill
9 Acres?

10 A. No.

11 Q. What was the status of Big Hill Acres with the
12 Environmental Protection Agency when you first became involved
13 with Big Hill Acres?

14 A. As I recall, because we became involved in April of 2000,
15 a number of months earlier in 1999, the Corps of Engineers, the
16 Mobile district office had issued a cease and desist order,
17 following which U.S. EPA Region 4 also issued a cease and
18 desist order. And either with that EPA proposed -- or C and D,
19 there was a proposed consent order that was sent to Dr. Beall
20 and Mr. Lucas for -- with a request that they enter into that
21 agreement with EPA.

22 Q. Okay. And did you have occasion to give advice to
23 Mr. Lucas and Dr. Beall regarding that proposed EPA consent
24 order?

25 A. Yes, we did.

1 Q. I'm gonna show you at this time what's been received in
2 evidence as Defendants' Exhibit 811.

3 MR. WITTMAN: If I could have it on the screen,
4 please, Your Honor?

5 THE COURT: Oh, you want it -- I'm sorry.

6 BY MR. WITTMAN:

7 Q. Do you recognize that as a copy of a letter you wrote on
8 May 10th, 2000, to a Mr. John Hankinson, who was the regional
9 administrator at that time of the Environmental Protection
10 Agency?

11 A. It appears to be that. I mean, I see only the first page.
12 As I recall, it was a multiple page document. But yes, that
13 appears to be the letter.

14 MR. WITTMAN: Your Honor, may I give the witness a
15 copy? It is a multipage document.

16 THE COURT: Yes.

17 BY MR. WITTMAN:

18 Q. If you would, please, Mr. Palmer, turn to the second page
19 of that letter. Did you attempt to find out what Mr. Lucas
20 knew about wetlands on the property when he and Dr. Beall
21 bought the land from the timber companies?

22 A. We did.

23 Q. Direct your attention to the paragraph of the letter on
24 page 2 that I've highlighted on the screen. Take a moment and
25 look at it. Does this accurately reflect what you learned from

1 Mr. Lucas and Dr. Beall about their knowledge of wetlands on
2 the property?

3 A. It does.

4 Q. You can take that down. Did you go out and inspect the
5 property yourself?

6 A. I did. My senior partner, Mr. Crawford, and I, who worked
7 together on this case for as long as I was involved, agreed
8 that I should go take a view of the area -- actually areas
9 plural -- that were involved here. I arranged to drive down
10 and meet Dr. Beall and Mr. Lucas. And they then drove me
11 through the combined area that is on various maps known as both
12 Big Hill Acres and Consolidated Investments. But I think over
13 time, all of it is generally referred to as Big Hill Acres.

14 Q. Look, if you would, at the bottom half of page 2 in the
15 section of your letter dealing with context. Do you see that?

16 A. Yes.

17 Q. Could I have that on the screen, please? Page 2. Bottom
18 half on context. Page 2. If I can use the Elmo. That's fine.

19 MR. WITTMAN: Could I refer to the Elmo, Your Honor?

20 THE COURT: You may.

21 BY MR. WITTMAN:

22 Q. Just take a moment and look at that. Does that reflect
23 what you learned from your drive through the property,
24 Mr. Palmer?

25 A. What this paragraph reflects is a combination of

1 information that we had obtained from Dr. Beall and Mr. Lucas
2 as well as my own personal observations in the areas through
3 which we drove.

4 Q. Did you have any concerns about the timber cutting
5 operations that had occurred before Mr. Lucas and Dr. Beall
6 bought this property?

7 A. I did.

8 Q. And what were those concerns?

9 A. Well, as we understood the history of the passage of
10 title -- from prior owners to Big Hill Acres and Consolidated
11 Investments, it became clear that a key ingredient in those
12 transactions was the cutting of timber off of the properties
13 that were held by the prior owner, which we understood to be
14 Wachovia Bank. So there was a lot of timber cutting activity
15 across the parcels that I drove through.

16 Q. Okay. If we turn to the next page of your letter, I'll
17 refer you just briefly to the top of that document. You say,
18 "To date, timber land has not been included in the discussions
19 of Big Hill Acres. We suggest that an essential party is
20 missing." Why did you believe that an essential party was
21 missing?

22 A. We took the view that the impacts to the area caused by
23 storms that produced substantial erosion were attributable to
24 the logging activities. And as best we understood how the
25 transactions occurred, we took the view that those

1 activities -- those final logging activities before the sales
2 were accomplished and even some timber removal after the sales
3 were accomplished would not have been entitled to privilege
4 under what's called the silvicultural exemption under Section
5 404 because the property was being converted from a timber
6 operation to a development operation. And that was the point
7 we were raising here.

8 Q. Okay. Does that mean that the responsibility for any
9 erosion, for example, that had been caused would have been the
10 responsibility of the timber company?

11 A. That was the contention we were raising here, yes.

12 Q. Did you give any advice to Mr. Lucas or Dr. Beall as to
13 whether the sale of a lot containing wetlands was subject to
14 Section 404 of the Clean Water Act?

15 A. We discussed that. And we advised them that there's no
16 provision in Section 404 of the Clean Water Act that prohibits
17 the sale of property which does or could contain wetlands areas
18 that are regulated pursuant to that provision of the Clean
19 Water Act.

20 Q. If you'd turn to page 4 of your letter. Did you advise
21 the EPA of that as well? And I refer you to about the middle
22 of the first full paragraph.

23 A. Yes, we did.

24 Q. And you referred to the rights, responsibilities and
25 liabilities between Big Hill Acres and the many purchasers in

1 the development as regards activity which resulted in any
2 impact. What did you mean by that?

3 A. At the time we entered this case, there had been already
4 several years of activity on the ground. Some obviously, in
5 our opinion, was in terms of alterations to the property
6 attributable to the timber cutting activities I have mentioned.
7 Persons had bought property and had moved on to the property
8 and were themselves beginning to engage in activities that we
9 had concerns about also being regulated.

10 And so we were concerned about trying to sort all this out
11 to see who had actually done what where and what the results or
12 consequences of their activities were. There were even other
13 parties, like the county having brought road materials in to
14 build or enhance roadways.

15 And the point that we were trying to make is that it
16 appeared to us at that time that a number of different parties
17 had been active on these properties for a number of years. And
18 we simply thought that the government should be looking at the
19 alterations that we saw out there in the context of who did
20 what.

21 Q. Were you at all concerned that Mr. Beall and Mr. Lucas
22 might be held responsible for the activities of third
23 parties -- other parties on the property?

24 A. Well, I think we may have raised that specifically in this
25 or other letters. But yes, that's why we raised these points.

1 Q. Now, did you have occasion to review the earlier cease and
2 desist order that had been issued by the Corps of Engineers on
3 June 3rd, 1999?

4 A. Yes. Dr. Beall and Mr. Lucas brought copies of both the
5 Corps of Engineers' cease and desist order and the EPA cease
6 and desist order for us to review, and we did.

7 Q. I'm gonna refer you to the bottom of page 4 of your letter
8 to Mr. Hankinson where you specifically address that, do you
9 not?

10 A. Where specifically, Mr. Wittman, are you directing me.

11 Q. Bottom of page 4. It says, "Big Hill Acres, Inc.,
12 activities since June 3rd, 1999." Do you see that?

13 A. Well, I see what you're talking about. Yes, I mean, I can
14 read the language

15 Q. Okay.

16 A. We referred to the Corps of Engineers' cease and desist
17 order and to the fact that the EPA consent order has a
18 statement in it saying that no additional lots containing
19 impacted wetlands will be sold without the authorization from
20 the Corps of Engineers.

21 Q. And did you review with Mr. Lucas and Dr. Beall what they
22 had done in response to that order?

23 A. We did.

24 Q. And what did you learn?

25 A. Well, they advised us that once they got the Corps of

1 Engineers' order, they had already been working with their
2 wetlands consultant, Dr. Dana Sanders, to perform on the ground
3 delineations of areas that in Dr. Sanders' opinion met the
4 profile to be classified a wetland area and that Dr. Sanders
5 had flagged those for Dr. Beall and Mr. Lucas, who in turn then
6 withdrew those areas from sale or offer for sale.

7 Q. Had Dr. Sanders been hired by Big Hill Acres before you
8 and the Butler, Snow firm were retained to represent Big Hill
9 Acres?

10 A. Yes. Dr. Sanders, as I recall, had been at work as a
11 wetlands consultant for these two companies and for Dr. Beall
12 and Mr. Lucas for some time.

13 Q. Okay. And what was your understanding of what Dr. Sanders
14 was ultimately going to do?

15 A. Well, it was our understanding that, as I mentioned a
16 moment ago, Dr. Sanders was retained to survey the parcels that
17 at that point represented what had come to be known as Big Hill
18 Acres. And he was going to then apply appropriate delineation
19 protocols to generate maps that would depict on maps areas that
20 in his opinion would meet those protocols to be classified as
21 wetlands.

22 And I also believe, because he had had discussions with
23 government regulators, he was going to delineate areas that in
24 his opinion reflected some degree of alteration according to a
25 classification approach that the government had prescribed by

1 category, such as land clearing or road building or house pad
 2 construction, driveway construction. That was our appreciation
 3 for what Dr. Sanders was brought in to do.
 4 Q. Okay. If you would, turn to page 5 of that May 10th
 5 letter. And I'll ask you about the second full paragraph.
 6 Based on your investigation when you came aboard back in April
 7 of 2000, Mr. Palmer, were there any development activities at
 8 Big Hill Acres after June 3rd, 1999?
 9 A. The accounting that Dr. Beall and Mr. Lucas gave us of
 10 their development activities over then about a six year period
 11 and my observation of what they described when I rode with them
 12 through the area indicated to me that the subdivisions plural,
 13 each of which, of course, had independently been developed,
 14 were essentially developed out in terms of roadways and that
 15 sort of thing.
 16 Q. By May of 2000, had the roads at Big Hill Acres
 17 essentially been completed?
 18 A. As best I recall, the roadways had been completed in terms
 19 of opening -- just opening the pathways that traversed the
 20 property generally east west north south. Not all of them had
 21 been paved. But in terms of the basic locations or layout of
 22 the roads, as best I recall, that was in place.
 23 Q. We had introduced into evidence during this trial an
 24 exhibit by the government, Government Exhibit 198, which you
 25 can see on the floor there in front of you. Does that aerial

1 properties.
 2 Q. And what advice did you give Mr. Beall and Mr. Lucas about
 3 agreeing to the proposed consent order?
 4 A. Well, we recommended that they not agree to the proposed
 5 consent order as it was written and proceeded to then engage
 6 with U.S. EPA point by point to recommend alternative
 7 approaches in a number of the articles in the proposed consent
 8 order that we thought would generate a document that might
 9 be -- might be agreeable to both the government and to
 10 Mr. Lucas and Dr. Beall.
 11 Q. But as proposed, did you believe that the consent order
 12 deprived Big Hill Acres of its valid right to continue its
 13 business?
 14 A. We did.
 15 Q. Okay. Now, did you invite representatives of the EPA to
 16 come down to meet you at the site at Big Hill Acres?
 17 A. Well, we extended that invitation several times,
 18 Mr. Wittman.
 19 Q. I'm speaking specifically in this time frame of May of
 20 2000.
 21 A. I'll have to look closely at the letter, but I think I can
 22 answer the question yes.
 23 Q. Would it help refresh your recollection if you would look
 24 at the top of page 8 of your letter?
 25 A. Yes,

1 photograph essentially depict the way the property looked when
 2 you went out there in May of 2000, April of 2000?
 3 A. Well, I wasn't in an airplane, Mr. Wittman. I saw it on
 4 the ground, which always gives you a different perspective.
 5 Looking at the exhibit and reflecting on the maps that
 6 ultimately I saw, it appears to me that the exhibit reasonably
 7 accurately depicts the general layout of the roadways as best I
 8 can determine.
 9 Q. Okay. If you would, turn to page 6 and take a look just
 10 at the last paragraph on that page. I want to ask you a
 11 question about the language that I've highlighted on your
 12 screen there. Why were you concerned about the EPA's demand
 13 that Big Hill Acres stop selling any of its remaining land?
 14 A. Well, from our earliest discussions with Dr. Sanders, it
 15 was clear that throughout this area there were some tracts --
 16 some lots that had been laid out where there were no wetlands
 17 at all. There were other lots that had some wetlands areas
 18 that Dr. Sanders had identified. And then there were other
 19 lots where there were substantial wetlands areas that he had
 20 identified.
 21 Our concerns were that if Dr. Beall and Mr. Lucas had
 22 entered into that consent order, they would have literally gone
 23 out of business that very day. Even as to properties where
 24 there were no wetlands whatsoever and they would have then lost
 25 all revenue or potential revenue from the sale of those

1 Q. Okay. And why did you want to meet at the site?
 2 A. From the very beginning, our approach was to attempt to
 3 move all of these controverted matters to closure through
 4 settlement. I simply found over many years that people have a
 5 better appreciation of things if they can get out on the
 6 ground, walk around, look at it and better understand really
 7 what's going on as it's happening than, as I said -- as I see
 8 in this letter, sitting in our air conditioned offices in
 9 Atlanta or Jackson. And we just recommended that all of us get
 10 together and get down on the ground and see how we could move
 11 the matter along.
 12 Q. Did you review your concerns as expressed in this letter,
 13 Mr. Palmer, with any of your partners at Butler, Snow?
 14 A. Yes. As I mentioned, from the outset my senior partner,
 15 Mr. Crawford, and I worked together on this case essentially in
 16 lock step. From time to time, as we needed to ask other
 17 members of the firm questions that were collateral to the
 18 environmental matters, yes, we would consult with these
 19 attorneys.
 20 Q. Okay. I'm gonna show you what I've marked for
 21 identification as Defendants' Exhibit B12.
 22 MR. WITTMAN: And if we could screen that, Your
 23 Honor, without the jury seeing it on the Elmo?
 24 THE COURT: All right.
 25 BY MR. WITTMAN:

1 Q. Do you recognize that as a -- an e-mail you sent to
 2 Mr. John Crawford on May 10th, 2000?
 3 A. I do.
 4 Q. And who is Mr. Crawford?
 5 A. Again, Mr. Crawford was my senior partner and the head of
 6 the environmental practice group in the firm and essentially my
 7 co-counsel in the matter.
 8 Q. And was this e-mail sent on the date that it bears, May
 9 10th, 2000?
 10 A. Yes.

11 MR. WITTMAN: I offer into evidence Defendants'
 12 Exhibit 812, Your Honor.

13 THE COURT: Any objection?

14 MS. HARRIS: One moment, Your Honor.
 15 Your Honor, I object on relevance of this and hearsay
 16 within it.

17 THE COURT: They're still looking at it.

18 MR. WITTMAN: Did you want me to respond, Your Honor?

19 THE COURT: No. I thought Ms. Harris was not
 20 finished. Are you finished, Ms. Harris?

21 MS. HARRIS: I'm finished. I would also just ask we
 22 be provided these exhibits before they come up. We have not
 23 seen these. And I'd like to review them before I'm put in this
 24 position.

25 MR. WITTMAN: Your Honor, I can do that. I can give

1 her a copy of everything I'm gonna use.

2 MS. HARRIS: That would be helpful.

3 THE COURT: Your objection is as to relevance then?

4 MS. HARRIS: And hearsay within it.

5 THE COURT: Mr. Palmer, was this e-mail communication
 6 provided to your clients, Mr. Lucas, or was this an interoffice
 7 e-mail that went only to -- between you and Mr. Crawford?

8 THE WITNESS: Your Honor, as best I recall, this was
 9 strictly an interoffice communication.

10 THE COURT: Objection is sustained.

11 BY MR. WITTMAN:

12 Q. Let me ask you this, Mr. Palmer. What was your view of
 13 the EPA's position at this time? And specifically, did you
 14 sense any overreaction on the EPA's part with respect to their
 15 dealings with Big Hill Acres?

16 A. My early assessments, as they would be in any enforcement
 17 action and all of my years of experience, is to get a sense of
 18 the direction that the regulators are taking with respect then
 19 to my sense of the violations they are asserting. My early
 20 sense, given what information we had been provided and
 21 developing my just-first impressions driving through the area,
 22 was that the government's proposals were heavy handed.

23 Q. All right. Now, how did the Environmental Protection
 24 Agency respond to your letter of May 10th, 2000, that you sent
 25 to them?

1 A. Well, we got a letter.

2 Q. Okay. Let me show you what's been received in evidence as
 3 Defense Exhibit 813 and ask if you recognize that as a copy of
 4 a letter sent to you by Ms. Thanne Cox of the Environmental
 5 Protection Agency?

6 A. I'm seeing only a portion of it, but it appears to be so,
 7 yes.

8 Q. Okay.

9 MR. WITTMAN: May I hand the witness a copy, Your
 10 Honor?

11 THE COURT: You may.

12 MR. WITTMAN: Your Honor, I'm not sure I offered this
 13 document in evidence. I'm not sure. I'd like to just offer it
 14 at this time. I think I have

15 THE COURT: Give me the number again.

16 MS. HARRIS: No objection.

17 MR. WITTMAN: 813.

18 THE CLERK: It is in evidence.

19 THE COURT: It is already in evidence.

20 MR. WITTMAN: Thank you, Your Honor.

21 THE COURT: Credit for that rapid response goes to
 22 the clerk of the court.

23 MR. WITTMAN: I'll manage to get her mixed up before
 24 the day is up, Judge, I'm sure. But I'll try not to.

25 BY MR. WITTMAN:

1 Q. How did the Environmental Protection Agency respond to
 2 your request that it look into the activities of the timber
 3 companies? And I'll direct you to the last line on page 1 of
 4 that letter.

5 A. The agency took the position that they were not going to
 6 pursue any prior owner -- in the way this was written, it would
 7 have to be -- the way I interpret it, not only the owner of the
 8 property but contractors acting on behalf of the owners at the
 9 time or subsequent to the sale. That they were not going to
 10 pursue the possibility that these parties could have been
 11 responsible for and could be then held liable for environmental
 12 consequences associated with their timber cutting activity.
 13 And they extended an invitation somewhere in this paragraph for
 14 us to reengage on that if we chose to.

15 Q. Okay. Would it be fair to say, Mr. Palmer, that you,
 16 acting on behalf of Mr. Lucas and Dr. Beall and the companies,
 17 disagreed with the Environmental Protection Agency about how
 18 the timber companies and other third parties should be dealt
 19 with out at Big Hill Acres?

20 A. We did.

21 Q. Okay. If I can ask you to turn to page 2 of the letter.
 22 And the first paragraph, Ms. Cox appears to take issue, does
 23 she not, with -- there we go -- your statement in your May 10th
 24 letter regarding the Corps of Engineers' visit to the property
 25 in 1996, doesn't she?

1 A. Yes, she does.

2 Q. Did you review the report of that 1996 visit that was

3 prepared by Mr. Ephriam?

4 A. Yes. Some long time after this letter, we asked for a

5 copy of it via the Freedom of Information Act and we got a copy

6 of what you're putting on the screen now. We did not have this

7 contemporaneous with either my letter or Ms. Cox's reply. We

8 got it some period -- some substantial period later.

9 Q. All right. I've got Exhibit 89 -- Government Exhibit 89

10 on the screen, which is the report prepared by Mr. Troy Ephriam

11 with the Corps of Engineers. I take it you did not have this

12 report in May of 2000?

13 A. No.

14 Q. It was prepared in 1996 -- I misspoke. Did Mr. Lucas have

15 a copy of it in May of 2000?

16 A. Not to my knowledge, no.

17 Q. Did Ms. Cox ever send a copy of it to you?

18 A. No.

19 Q. Did Ms. Cox ever tell you that the Corps of Engineers

20 closed its file on Big Hill Acres in 1996 and took no action at

21 all?

22 A. No.

23 Q. I'm gonna show you what's been received in evidence as

24 Defendants' Exhibit 7 and ask you to take a moment and look at

25 it.

1 A. Mr. Wittman, I could take all day, but I can't read it.

2 THE COURT: You didn't turn off the auto focus

3 function, did you? There you go. Thank you.

4 THE WITNESS: Thank you.

5 MR. WITTMAN: Bubba was teaching me how to use this

6 last night. Thank you, Your Honor.

7 THE COURT: That is a frightening prospect.

8 BY MR. WITTMAN:

9 Q. Mr. Palmer, this document is a document that was received

10 earlier. It's a micrographic system data report from the Corps

11 of Engineers. Do you see that?

12 A. I do.

13 Q. And it relates to the property at Big Hill Acres. And it

14 finds there's no waterway at Big Hill Acres, does it not?

15 A. That's what it says.

16 Q. When you get down to the type of final action down at the

17 bottom, what do those initials FNV stand for?

18 A. I understand that to mean finding of no violation.

19 Q. Okay.

20 A. Although, Mr. Wittman, we did not get this document from

21 the Corps of Engineers. We got the other document that you put

22 on the screen. But this document that you're showing me now, I

23 don't recall being disclosed by the Corps of Engineers when we

24 submitted our FOIA request.

25 Q. Tell the ladies and gentlemen of the jury what an FOIA

1 request is.

2 A. It's a mechanism available to citizens to obtain documents

3 from the federal government. It's called the Freedom of

4 Information Act. And folks may avail themselves of that law to

5 obtain official documents, records, information from the

6 federal government.

7 Q. Okay. So if you look back at Ms. Cox's letter on page 2

8 at the top where she is discussing with you your May 10th

9 letter, she didn't give you any documentation to back up the

10 position she took in that letter, did she?

11 A. No.

12 Q. If I could direct you to the last paragraph of her letter

13 on that page, the sentence beginning "Recognizing that selling

14 these property lots themselves is not prohibited by Section 404

15 of the Clean Water Act"?

16 A. Yes.

17 Q. Did Ms. Cox agree with you that the sale of lots at Big

18 Hill Acres was not prohibited by Section 404 of the Clean Water

19 Act?

20 A. Yes.

21 Q. Okay. What advice, if any, did you give to Mr. Lucas

22 about that, whether he had to follow the Clean Water Act to

23 sell lots out there?

24 A. Well, as I testified earlier, in our earliest

25 conversations with Dr. Beall and Mr. Lucas, we advised them --

1 to repeat myself -- that the Clean Water Act does not prohibit

2 the sale of property which does or might contain wetlands that

3 could be determined to be within the scope of that particular

4 section of the Clean Water Act.

5 Q. Okay. What was the EPA's reaction to your attempts at

6 reaching an amicable resolution of this matter?

7 A. Well, our efforts toward that end, Mr. Wittman, unfolded

8 over a number of months. And as reflected in a long series of

9 correspondence between our firm and first one attorney,

10 Ms. Cox, and then Mr. Paul Schwartz, who took the file after

11 Ms. Cox moved to another EPA region. But from the beginning,

12 we asked EPA to work with us to resolve all issues -- to

13 ultimately reach a global settlement in the matter as quickly

14 as we reasonably could, understanding that Dr. Sanders still

15 had work to finish. And there was still technical issues that

16 were certainly beyond the lawyers' control. But that we wanted

17 to work towards settlement.

18 Q. If you'll look finally at the last page of Ms. Cox's

19 response to you, she tells you that the EPA also desires to

20 enter into good faith settlement discussions; is that correct?

21 A. Yes.

22 Q. Now, you told us a moment ago that you were aware that the

23 Corps of Engineers had issued a cease and desist order to

24 Mr. Lucas in June of 1999; correct?

25 A. Yes.

1 Q. And I'm gonna show you what's in evidence as -- I believe
 2 it's Government Exhibit 129, which is the June 3rd, 1999, cease
 3 and desist from the Corps of Engineers, and direct your
 4 attention to the last paragraph on that page. There it goes:
 5 The paragraph will start "You're hereby directed to cease and
 6 desist." Do you see that?
 7 A. Yes.
 8 Q. And what activities was the Corps of Engineers ordering
 9 Mr. Lucas to cease and desist from?
 10 A. Well, I can't see the whole page here. But earlier -- in
 11 earlier paragraphs, the Corps recited the standard language
 12 from Section 404 of the Clean Water Act about discharging
 13 dredged or fill material. And so what the cease and desist
 14 order directed these parties to do is to stop discharging
 15 dredged or fill material into waters of the United States.
 16 Q. And is there a specific location that's referred to in
 17 this letter?
 18 A. Well, I can't see the whole letter, unless --
 19 Q. I'm looking at the first paragraph there on your screen.
 20 A. Yes. You have backed it up. In the very first paragraph,
 21 yes, there is reference to a specific location. And I'm trying
 22 to remember if at some point the geographic description of
 23 these sections was denominated, the site, S-I-T-E. But yes,
 24 there are sections indicated by section, township and range in
 25 Jackson County, Mississippi.

1 Q. If you'll skip down to about the third paragraph, I think
 2 that's the paragraph you were looking at that defines what
 3 Section 404 deals with?
 4 A. Yes.
 5 Q. That's that paragraph right there (indicating)?
 6 A. Yes.
 7 Q. And it prohibits the placement of dredged or fill material
 8 into waters of the United States, including wetlands, without a
 9 Department of the Army permit?
 10 A. Yes.
 11 Q. That's what this letter said. Okay. What are dredged or
 12 fill materials?
 13 A. Well, Mr. Wittman, frankly, there are many, many, many
 14 court decisions that deal with those words. But from my
 15 perspective, material that is -- that is in an area --
 16 MS. HARRIS: Your Honor, I'm gonna object to this.
 17 These terms are defined by statute, and I don't know that his
 18 opinion is relevant to that.
 19 THE COURT: Objection overruled. He may answer.
 20 A. Materials that are in an area that is determined to be a
 21 wetland that are moved around, whether they are dug and
 22 relocated or moved around by machines or if there are trees and
 23 debris that are moved around, that are moved into a regulated
 24 area. I've always used that appreciation for the term dredged.
 25 Fill material I've always loosely considered material

1 that's brought into an area from some other area and is
 2 deposited there and would be considered fill. But again, as
 3 has been mentioned, these statutes have definitions for the
 4 terms. But then those definitions have been tested many times
 5 in many cases.
 6 Q. Were there any dredging activities going on at Big Hill
 7 Acres when you were involved representing the company?
 8 A. I did not personally observe activities of that nature
 9 either with machines moving material around or dump trucks, if
 10 you will, bringing material in. The times that I was down
 11 there, I did not personally observe any such activities to the
 12 best of my recollection.
 13 Q. Now, the Environmental Protection Agency also issued a
 14 cease and desist order of its own in -- let me get the exact
 15 date -- August of 1999?
 16 A. I believe that's correct.
 17 Q. August 4th, 1999. Was that essentially a follow-up of the
 18 order previously issued by the Corps of Engineers?
 19 A. Essentially.
 20 Q. Let me show you this one portion of that order. Does what
 21 I have highlighted there at the bottom, Mr. Palmer, reflect
 22 what Mr. Lucas and the companies were ordered to do?
 23 A. Well, that's what it says, Mr. Wittman. The parties that
 24 were addressed here were told to immediately cease
 25 participating in causing or allowing any additional discharges

1 of dredged or fill material. And there's reference to the
 2 C.F.R. cite into the discharge area.
 3 Q. Which is essentially the same thing that the Corps of
 4 Engineers had ordered?
 5 A. Essentially. We would have to go back and lay the two
 6 cease and desist orders down side by side to see if there were
 7 differences in either the preamble or the mandates, but the
 8 gist of the two orders I would say is essentially the same.
 9 Q. And just to go back and do that and look at the beginning
 10 of that EPA order, that addresses, does it not, the same area
 11 of Sections 8, 9, 10 and 15 of Township 6 South, Range 8 West
 12 in Jackson County, Mississippi?
 13 A. It appears to, yes.
 14 Q. Was it your understanding that those two orders were for
 15 all practical purposes one and the same?
 16 A. Well, essentially the same. Without, again, doing a side
 17 by side line by line comparison, I can't say that they
 18 absolutely were. Our appreciation for these two government
 19 orders months after they were issued, though, was that
 20 conclusion that they were essentially the same and directed at
 21 the same activities in the same places.
 22 Q. To your knowledge, did Mr. Lucas comply with those orders?
 23 A. They represented to us that they did.
 24 Q. To your knowledge, was any dredged or fill material
 25 deposited in what was described as the discharge area after the

1 date of entry of those orders in August of 2000?
 2 A. Dr. Beall and Mr. Lucas represented to us that that had
 3 not occurred.
 4 Q. I misspoke. August of 1999. Correct?
 5 A. Yes, sir.
 6 Q. Okay. You mentioned Dr. Dana Sanders. We talked about
 7 him a moment ago. Did you have any input into Dr. Sanders'
 8 wetlands delineations that he was making?
 9 A. No. Dr. Sanders was retained to perform that specialized
 10 work. I am not competent to perform that work.
 11 Q. Okay. Did the Environmental Protection Agency have any
 12 involvement in the work that Mr. Sanders -- Dr. Sanders was
 13 doing?
 14 A. Yes.
 15 Q. Okay. And did the Environmental Protection Agency, in
 16 fact, undertake to direct Dr. Sanders on occasion?
 17 A. According to Dr. Sanders, they did.
 18 Q. Okay. And I'm gonna show you --
 19 MR. WITTMAN: If I could just show this to the
 20 witness and not to the jury, Your Honor, on the Elmo.
 21 BY MR. WITTMAN:
 22 Q. I'm gonna show you what I've marked as Exhibit 840 --
 23 A. Yes.
 24 Q. And ask you to take a moment and look at it and see if you
 25 recognize that as an e-mail that you sent to Dr. Sanders

1 concerning the EPA site visit.
 2 A. Yes. And it was replying to, as I recall, an e-mail that
 3 Dr. Sanders had sent to me.
 4 Q. Okay.
 5 MR. WITTMAN: Your Honor, I offer into evidence
 6 Defendants' Exhibit 840.
 7 MS. HARRIS: Objection, Your Honor.
 8 THE COURT: What is your objection?
 9 MS. HARRIS: These documents were not turned over.
 10 And I'd like to approach.
 11 THE COURT: You want to what?
 12 MS. HARRIS: These documents were not turned over.
 13 And I'd like to approach the bench.
 14 THE COURT: Oh, you would like to approach. I'm
 15 sorry. I simply did not hear you. You may.
 16 (Bench conference on the record with all counsel;
 17 defendants not present, as follows:)
 18 MS. HARRIS: In the materials that Mr. Wittman just
 19 turned over to me, there are these three additional letters
 20 that we have never seen before that I think that's a discovery
 21 violation. Given that they have not been provided to us before
 22 this time despite the existence of exhibit cutoffs and
 23 everything else, we would ask they not be admitted.
 24 THE COURT: What about the one that's on the screen
 25 now?

1 MS. HARRIS: This is one of them. I've never seen it.
 2 before this.
 3 THE COURT: That's Defendants 840. That's the
 4 e-mail between Mr. Palmer --
 5 MR. KORZENIK: Your Honor, could I, if I may, add
 6 they're subpoenaed from two different parties, both from Big
 7 Hill Acres and also from D.R. Sanders and they were not
 8 produced pursuant to grand jury subpoena.
 9 THE COURT: Were these documents produced?
 10 MR. WITTMAN: Your Honor, I do not know.
 11 THE COURT: I appreciate your candor.
 12 MR. WITTMAN: It happened -- the production happened
 13 before I got heavily involved in the case. But I know there
 14 were some documents that were not produced because they were
 15 subject to attorney/client privilege. I don't think this
 16 document is necessarily one of them. But it is not something I
 17 can't do without. I can proceed without it.
 18 THE COURT: I was going to comment that he can
 19 certainly testify to what he did. He can testify to what he
 20 said and what advice he gave to Mr. Lucas without necessarily
 21 the presentation of his e-mail --
 22 MR. WITTMAN: Sure. I can do that.
 23 THE COURT: -- interoffice e-mail. I'm gonna sustain
 24 the objection.
 25 MS. HARRIS: Do I have to do it for the other two

1 when he tries to move those in; or could we go ahead and --
 2 MR. WITTMAN: I'm gonna stay away from those now that
 3 I've seen you have an objection to them.
 4 MS. HARRIS: Okay.
 5 MR. WITTMAN: I'm going to try to.
 6 THE COURT: Well, again, letters and memos and
 7 e-mails that tend to simply underscore or bolster what a
 8 witness said is not necessarily needed as an exhibit. And
 9 objections on those lines in all likelihood would be sustained.
 10 MR. WITTMAN: Okay. Thank you, Your Honor.
 11 (Bench conference concluded)
 12 THE COURT: Is the document camera clear?
 13 Mr. Wittman, is the document camera clear so I can turn it back
 14 on? Anything on there? Okay. Good. For whatever reason,
 15 when the document camera is turned off from the bench, the
 16 speakers go off in the jury box. So I want to be sure that I
 17 use that -- use that feature sparingly.
 18 BY MR. WITTMAN:
 19 Q. I think before we took the break, Mr. Palmer, I was asking
 20 you about the EPA's direction of the work Dr. Sanders was
 21 doing. Do you recall that?
 22 A. I do.
 23 Q. Was that a concern of yours?
 24 A. It was.
 25 Q. Why?

1 A. Because Dr. Sanders had been retained by Dr. Beall and
2 Mr. Lucas to perform very specialized services as a consultant.
3 And we felt that that's what he should be allowed to do and be
4 prepared to ultimately defend his work product.

5 Q. And did you so advise Dr. Sanders and Mr. Lucas?

6 A. We did.

7 Q. When did Dr. Sanders complete his wetlands delineation?

8 A. I don't recall precisely. There are certainly letters
9 that will reflect several iterations, Mr. Wittman, of
10 Dr. Sanders' work. He had generated an initial series of maps.
11 He then from time to time -- I don't know how many times -- was
12 on the ground with one or more EPA representatives. I don't
13 know if Corps of Engineers' representatives were on the ground
14 as well. But that led to some changes -- amendments to his
15 work product.

16 But there came a time when he finished producing the maps.
17 There were some substantial technical difficulties that arose,
18 frankly, beyond his control later on. But ultimately the
19 process ran its course sometime on into the year 2000.

20 Q. How long did it take the Environmental Protection Agency
21 to make a determination as to the adequacy of Dr. Sanders'
22 wetland delineation?

23 A. Well, as I recall, the final submission along with
24 Dr. Sanders' report, which we asked him to prepare to explain
25 his professional approach, what he did, how he did it, where he

1 go beyond what was being asked for and begin to generate a
2 series of additional aids in the form of maps that we thought
3 would be more helpful to EPA than simply boxes full of paper.

4 Q. Okay. And did Mr. Lucas cooperate with the Environmental
5 Protection Agency?

6 A. To the best of my knowledge, he did.

7 Q. Okay. And was his attitude one of attempting to
8 accomplish what you were trying to accomplish -- that is, to
9 see this matter resolved?

10 A. Yes.

11 Q. In fact, while I'm on that subject, are you familiar with
12 the concept of an after the fact -- after the fact permit or an
13 a-t-f permit that the Corps of Engineers issues?

14 A. I am.

15 Q. Would you tell us what that involves? What does that mean
16 to get an after the fact permit?

17 A. Well, as the term suggests, if someone conducts an
18 activity without first getting a permit that would be required
19 for the activity and then that activity is discovered, then if
20 the Corps of Engineers chooses, it may require a remedy in the
21 form of either some changes to what's been done or mitigation
22 for what's been done and then they choose to issue a permit
23 after all that as though they would have done it beforehand if
24 a proper permit application had been submitted.

25 Q. Okay. And were you aware that Mr. Lucas was indeed

1 did it, what his conclusions were, what his final maps were.
2 After that was submitted in the Fall of 2000, October or
3 November, it was several months, as I recall, before EPA
4 finally agreed to our request and determined that that
5 submission would be the -- what's called the jurisdictional
6 determination for all the property.

7 Q. Now, during the period from April of 2000 through the
8 summer of the year 2000, how often did you communicate with
9 representatives of the Environmental Protection Agency on
10 behalf of Mr. Lucas and his companies?

11 A. Well, on an as needed basis, again, there are letters back
12 and forth between us. But it was -- I would say on a fairly
13 regular basis over those few months.

14 Q. Okay. Did you keep Mr. Lucas and Dr. Beall informed of
15 what you were doing with the EPA?

16 A. Absolutely. That's the firm's policy that we not only
17 would advise them orally of our communications with government
18 regulators but also provide them with copies of correspondence
19 that we exchanged with those government regulators.

20 Q. What advice, if any, did you give Mr. Lucas and Dr. Beall
21 concerning cooperation with the EPA?

22 A. Well, that it was in their best interests to cooperate
23 fully with the government in terms of responding to requests
24 for information, to the production of documents and records.

25 And my own recommendation, along with Mr. Crawford, was that we

1 pursuing an after the fact permit for Big Hill Acres?

2 A. Well, we discussed that as being an ideal outcome in an
3 ultimate global settlement. To then return everything, not
4 only the property but all the parties to status quo through a
5 global settlement resolution, that would involve after the fact
6 permits. It would also involve then whatever remedies that the
7 government would require in the form of restoration of certain
8 impacted areas, mitigation for other impacted areas. It would
9 be a global settlement.

10 Q. And was that a part of what Dr. Sanders was doing in his
11 work?

12 A. To the best of my understanding, it was because he was
13 generating the base maps that would be essentially the
14 predicate for decisions on all these points.

15 Q. And was that the main thrust of the work that you were
16 doing in the Summer of 2000 on behalf of Mr. Lucas?

17 A. Yes. That was our goal to move all matters along, like
18 I've said already, toward resolution.

19 Q. If I may, I'm gonna show you a copy of a letter dated June
20 9th, 2000, that -- from you to Ms. Thanne Cox.

21 MR. WITTMAN: And if I may, Your Honor, approach and
22 give the witness a copy?

23 BY MR. WITTMAN:

24 Q. Do you recognize that letter?

25 A. Yes.

1 Q. And did you send it to Ms. Cox on or about the date that
2 it bears?

3 A. I did. We sent this letter to Ms. Cox covering the
4 responses that Dr. Beall and Mr. Lucas were providing to
5 questions -- information requests that the government had
6 already sent to them. And so this is the package which
7 consists of the answers that Dr. Beall and Mr. Lucas provided
8 as well as our covering letters.

9 MR. WITTMAN: Your Honor, I offer into evidence
10 Defendants' Exhibit 1193.

11 MS. HARRIS: No objection.

12 THE COURT: Without objection, it will be marked and
13 admitted.

14 (Exhibit D-1193 marked and received in evidence)

15 BY MR. WITTMAN:

16 Q. I just want to go through this briefly, Mr. Palmer. The
17 first paragraph simply says what you just told us that you were
18 sending some materials to her. In the second paragraph, you
19 talk about you regret having to respond to the information
20 requested in piecemeal fashion, but it was necessitated by the
21 press of time. What kind of time constraints were you under in
22 the Summer of 2000?

23 A. Initially when we were retained, the information request,
24 as I recall, this one was out there. We advised EPA that we
25 had been asked to provide representation in the matter and that

1 And the date June 9, 2000, is at the top.

2 Q. Just as a matter of curiosity, why is it on Big Hill Acres
3 stationary if you, as an attorney, were representing Big Hill
4 Acres at the time?

5 A. Well, because the questions were not posed to us as
6 counsel. The questions were posed to Mr. Lucas, Dr. Beall and
7 to their companies. So it was their responsibility to prepare
8 answers.

9 Q. All right. Did you assist in the preparation of these
10 answers?

11 A. We assisted to the extent that we explained very carefully
12 the necessity of generating full, complete answers to all
13 questions. And so when the initial drafts of the answers were
14 prepared, we went through them to satisfy ourselves that the
15 questions had been accurately addressed and fully answered.

16 Q. Okay. That last line, I can't quite get. I just wanted
17 to set that up for the jury. The document goes through and
18 quotes each request, and then the response is set forth in bold
19 print; is that correct?

20 A. It is. We recommended that form. That's the form that
21 our firm had used in the past for submitting replies. It is
22 simply easier to restate the question and then to state the
23 answer and to distinguish the two in bold type.

24 Q. I just have a few things I want to go over in this report
25 with you. Specifically on page 3, you will see there's a

1 it was simply not feasible to provide full and complete
2 responses on the time frame they had specified when they sent
3 the information request to our clients. And we asked for an
4 extension of time, as I recall, of, I think, 60 days to reply
5 to their information request.

6 Q. All right. And did the EPA grant you that request?

7 A. No. As I recall, they gave us 30 days. But I would have
8 to go back and review the specifics of our letters here. I
9 think we got 30 days.

10 Q. Now, at the top of the second page, you tell Ms. Cox that --
11 you're only covering the transmission of responses to the
12 information request and you're not responding to the rest of
13 her May 30th letter that we looked at a moment ago; is that
14 correct?

15 A. That's what we said.

16 Q. And I think that covers -- one other thing I wanted to
17 cover is on the third page. Again, you express your
18 appreciation for her receptiveness to having a global meeting
19 to try and get a final resolution of all the issues in the
20 case; correct?

21 A. Correct.

22 Q. Now, let's turn to what was sent to Ms. Cox with that June
23 9th, 2000, transmission. And I think you have a copy of that
24 before you as well. It's a part of Exhibit 1193 actually.

25 A. I do. It is on Big Hill Acres, Incorporated, stationary.

1 question about all persons that are consulted in the
2 preparation of the answer. Do you see that?

3 A. Which numbered question are you looking at?

4 Q. Question 2.

5 A. Yes.

6 Q. Okay. So Mr. Lucas and Dr. Beall conferred, and they then
7 conferred together with you?

8 A. Yes.

9 Q. And was anyone else at the Butler, Snow firm involved in
10 those discussions?

11 A. Myself and Mr. Crawford.

12 Q. Okay. All right. If you would -- that report goes on to
13 provide a lot of information. I'm not going over all of -- all
14 of them, but just a few illustrative examples. For example, on
15 page 4 in response to Question 7, you sent all of the
16 conveyance instruments for the parcels sold by Big Hill Acres
17 to the EPA back in the year 2000; is that correct?

18 A. Yes. That's what they asked for.

19 Q. All right. Then in response to No. 10 -- I'm gonna have
20 to fold this. The statement is made in the response that in
21 some cases surveying an initial road and site preparation work
22 was done even before Big Hill Acres, Inc., took title to the
23 property. What did you mean by that?

24 A. Well, I was recounting the history of the development that
25 Dr. Beall and Mr. Lucas had given to us going back to the

1 inception of their initial purchase in 1994. So we were simply
2 reciting -- they were -- in the answer here how they began
3 actual development activities at the layout stage back in those
4 days.

5 Q. Okay. If you would, please, turn to page 5 and Question
6 No. 11. And I'm not gonna take you through all of this. But
7 the Question No. 11 asks for information about the old logging
8 roads being upgraded to meet county specifications; correct?
9 And the construction of new roads for access to the property?

10 A. Yes.

11 Q. And did you -- without taking us through everything in
12 this report, did you for the next few pages go into some detail
13 with the EPA as to every road that was on Big Hill Acres?

14 A. Yes. Dr. Beall and Mr. Lucas put to paper the history of
15 the emergence of these roadways through these tracts. And
16 that's what this reflects is their story of how these roads
17 came to be.

18 Q. Okay. And are all of the roads at Big Hill Acres county
19 roads, Mr. Palmer?

20 A. To the best of my knowledge, they were dedicated as county
21 roads, yes.

22 Q. What does it mean to have a dedicated county road?

23 A. It generally means that when a subdivision is developed
24 and the roadways are then dedicated to the county, the intent
25 is to make those public roadways subject to county maintenance

1 testimony. But I'm just -- so the jury will understand what
2 you're saying there, I'll just pick one and show it to you. Is
3 this the type map that you're talking about that was prepared?

4 A. Yes.

5 Q. Okay. And did you prepare several sets of these types of
6 maps during the course of your dealings with the Environmental
7 Protection Agency during the Summer of 2000?

8 A. We did. There were several versions of those. It's a
9 series of Dr. Sanders' maps. And we simply adapted his work to
10 this process of working with EPA to try to simplify our
11 conversations with them about when properties were sold, who
12 developed what roads and when, what lots remained for sale or
13 could be sold. It's the old business of a picture is worth a
14 lot of thousands of words.

15 MS. HARPIS: Your Honor, could I inquire as to what
16 exhibit number that was and whether it's been admitted?

17 MR. WITTMAN: It has not been admitted. I was using
18 it simply as a demonstrative at this point.

19 THE COURT: It's not yet been admitted.

20 BY MR. WITTMAN:

21 Q. In any event, all of the -- you say these were voluminous
22 materials -- all of these voluminous materials were shipped out
23 to the EPA in June of 2000, which was roughly about -- less
24 than two months after you were retained by Mr. Lucas and
25 Dr. Beall?

1 and access.

2 Q. And when they become county roads, is title to the roadway
3 transferred to the county?

4 A. Yes, as best I recall.

5 Q. Did you in this report -- or did Dr. Beall and Mr. Lucas
6 in this report give the EPA full information regarding the
7 subdivision plan -- and I'll direct your attention to page 8 of
8 the report.

9 A. Yes. You must be referring to --

10 Q. Question 13.

11 A. -- Question 13.

12 Q. Yes.

13 A. Yes. This is the answer that Dr. Beall and Mr. Lucas gave
14 to that question about subdivision plans and plats.

15 Q. And were copies of those plans and plats shipped to the
16 Environmental Protection Agency in response to their Question
17 No. 13?

18 A. As best I can recall, yes, they were. Now, again, I
19 mentioned awhile ago that because of simply the volume of
20 material and the difficulty of sorting through it document by
21 document, we recommended that we shift to a new set of maps
22 that would be much easier to understand and work with and would
23 at a glance depict the answers to the questions on a map rather
24 than in words.

25 Q. I'm gonna get into some maps with you later on in your

1 A. Yes, sir. Because as I mentioned, we had sought more time
2 than we were given to comply with the information request. So
3 a lot of activity had to happen in a short time to fully
4 respond to these questions.

5 Q. Had virtually all of the roads at Big Hill Acres been
6 completed prior to June of 2000?

7 A. As I answered when you asked me earlier, that was our
8 understanding.

9 Q. I had forgotten I had asked you that earlier. Thank you.
10 Let me direct your attention to page 9 of that report and
11 specifically to Question 16. That question dealt with what was
12 told to the purchasers of the property?

13 A. Yes.

14 Q. The question says lots which -- I'll read the question:
15 "Prior to the sale of the lots located at the site property,
16 what did respondent tell the purchasers about the low lying
17 property on the property lots which is subject to periodic
18 flooding?" And in bold we have the response that Mr. Lucas and
19 Dr. Beall gave with your assistance; is that correct?

20 A. This is the response that they gave. And this is a point
21 because we were attempting to move them to prepare their
22 answers to these questions when I drove across the property
23 with them. And so with the questions in hand and I was asking
24 what they were going to say, then this is what they said to me
25 about this issue of flooding.

1 Q. What was the -- the question I wanted to ask you is: What
 2 was the problem with the fill and inadequate culverts installed
 3 by Jackson County?
 4 A: At one particular location, as I recall, on the south end
 5 of the property, Mr. Lucas and Dr. Beall pointed out an area
 6 where some road work had been done. Part of that activity, as
 7 I recall, included the replacement of old culverts or the
 8 installation of new culverts or both. And the point they were
 9 making is that the -- that larger culverts should have been
 10 used than were used. And in the wake of heavy rains, water
 11 could not get through the undersized culverts, which caused
 12 water to back up at that location until it could then vent
 13 through the culverts.
 14 Q. Okay. Then finally, there's a question at the bottom of
 15 page 9, which asked whether Mr. Lucas and Dr. Beall had
 16 informed any purchasers of low lying properties of the
 17 potential applicability of Clean Water Act Section 404. Do you
 18 see that?
 19 A. I do.
 20 Q. And the answer is in bold print?
 21 A. It is.
 22 Q. Goes over to the following page?
 23 A. It does.
 24 Q. So it was not until May of 1999 upon being advised by the
 25 Corps of Engineers of the potential applicability of Section

1 404 that Mr. Lucas and Dr. Beall undertook to make purchasers
 2 aware of that possibility; is that correct?
 3 A. This is what they related to us. And at some point not
 4 long thereafter, as a result of this conversation, I recall
 5 that's when they decided to retain the services of Dr. Sanders.
 6 Q. Were you aware, Mr. Palmer, that Mr. Lucas and Dr. Beall
 7 were continuing to sell lots at Big Hill Acres in June of 2000
 8 when this report was submitted?
 9 A. Yes. I recall that their sales activities were still
 10 ongoing -- at least I understood that from conversations with
 11 them in early June.
 12 Q. What advice, if any, had you given to Mr. Lucas and
 13 Dr. Beall about continuing to sell lots at Big Hill Acres in
 14 June of 2000?
 15 A. Well, the same advice that I mentioned earlier. We told
 16 them that the Clean Water Act does not prohibit sales of
 17 regulated wetlands properties.
 18 Q. Okay.
 19 A. So --
 20 Q. And had you continued to advise them that the restraining
 21 order or the cease and desist order that was in effect from the
 22 Corps of Engineers in '99 only applied to development type
 23 activities with respect to dredged or fill materials?
 24 A. That was the language of the orders themselves.
 25 Q. It didn't apply to selling any lots, did it?

1 A. There was no language that I recall in the cease and
 2 desist orders that specifically mentioned the word sales of
 3 lots.
 4 Q. And in fact, the EPA in an earlier letter I showed you in
 5 May of 2000 had acknowledged that the cease and desist did not
 6 prevent the sale of lots, did it not?
 7 A. Yes, they did.
 8 THE COURT: Mr. Wittman, would this be a good time to
 9 let the jury have a mid-morning break?
 10 MR. WITTMAN: Yes, Your Honor.
 11 THE COURT: Ladies and gentlemen, you may go back to
 12 the jury room.
 13 (Jury out at 10:51 a.m.)
 14 THE COURT: We'll take about a 15 minute recess.
 15 (Recess at 10:51 a.m., until 11:09 a.m.)
 16 THE COURT: Are you ready, Mr. Wittman?
 17 MR. WITTMAN: Yes, Your Honor.
 18 THE COURT: Is the government ready?
 19 MR. GOLDEN: Yes, Your Honor.
 20 THE COURT: Bring in the jury, please.
 21 (Jury in at 11:10 a.m.)
 22 MR. WITTMAN: May I proceed, Your Honor?
 23 THE COURT: You may.
 24 BY MR. WITTMAN:
 25 Q. I have one more question I want to ask you about that

1 June 9th, 2000, report. And it relates to Question 17. And
 2 the answer, that again relates to -- well, the question is
 3 whether Mr. Lucas and Dr. Beall offer to provide services to
 4 address the periodic flooding which would occur in the low
 5 lying areas of the site property lots. And the response refers
 6 back to an earlier answer and reflects that Big Hill strongly
 7 disagrees with the contention that any of the property is
 8 subject to flooding; correct?
 9 A. That's correct. That's what Dr. Beall and Mr. Lucas
 10 represented to us. That was their answer. And their answer
 11 was communicated to EPA.
 12 Q. Several times?
 13 A. Well, obviously at least twice in this document.
 14 Q. All right. Let me show you what's been received in
 15 evidence as Government Exhibit 133. It's a letter from Ms. Cox
 16 dated July 26th, 2000, and addressed to you. You have seen
 17 that before, haven't you?
 18 A. Yes, sir.
 19 Q. And the purpose of the letter is to follow-up on issues
 20 raised in the June 22nd meeting -- a June 22nd meeting held at
 21 the Mississippi DEQ in Jackson?
 22 A. That's what it says, yes, sir.
 23 Q. Now, on the second page of the letter, I'd like to direct
 24 you to the last paragraph of the order. Now, did you at that
 25 June 22nd meeting tell Ms. Cox that Mr. Lucas had and would

1 continue to lease and/or sell lots at Big Hill Acres and
 2 Consolidated Investments?
 3 A. I did not.
 4 Q. Who else was at that meeting?
 5 A. There were a number of persons from the Department of
 6 Environmental Quality, including, as I recall, two of the staff
 7 attorneys from the state Department of Health, including maybe
 8 one of their attorneys, one or two people from U.S. EPA,
 9 including Ms. Cox, and me.
 10 Q. Were you surprised at the reception you had at that
 11 meeting?
 12 A. I was surprised at the number of people. I anticipated
 13 sitting down with three attorneys -- with someone from DEQ,
 14 someone from the Department of Health and then someone from
 15 EPA -- and myself to try as best we could to advance settlement
 16 discussions.
 17 Q. And what did you understand the purpose of the meeting to
 18 be, Mr. Palmer?
 19 A. Well, I went out there to be sure that all of us were
 20 focusing on the same contentions about violations, on the
 21 wetlands front and on the wastewater front with the Department
 22 of Health. There was yet another front that I had advised our
 23 clients early on that could be raised by the Department of
 24 Environmental Quality, and that is storm water issues. Also,
 25 Clean Water Act issues. And we wanted -- I wanted to be sure

1 that we were all prepared to move forward toward the global
 2 settlement that I've referred to several times today.
 3 Q. And if you would, please, describe for the ladies and
 4 gentlemen of the jury what happened at that meeting.
 5 A. Well, of course, we had a ranging discussion. The
 6 meeting, to the best of my knowledge, was not recorded. So
 7 everybody simply took notes and went away with their own notes.
 8 But right near the end of the meeting, Ms. Cox on behalf of EPA
 9 made a demand to me that all lot sales -- all lot sales cease.
 10 And I told her that I would immediately communicate that demand
 11 to Dr. Beall and to Mr. Lucas and to reply back with their
 12 answer as quickly as I could get to them.
 13 Q. And that meeting that you attended was on June 9th, I
 14 believe?
 15 A. No, sir. That was June 22nd.
 16 Q. I'm sorry. June 22nd. Okay. Now, this letter from
 17 Ms. Cox is dated July 26th, 2000; correct?
 18 A. That's correct.
 19 Q. And getting back to her statement to you that -- there we
 20 go -- about your client continuing to lease and/or sell lots at
 21 Big Hill Acres, you said you didn't tell her that?
 22 A. I certainly did not suggest anything of the sort in the
 23 meeting. Again, I told everybody in that room that I would
 24 communicate the government's demand to Dr. Beall and Mr. Lucas,
 25 which I did literally as I walked out of the building in the

1 parking lot and related that message to my law partner and
 2 asked that he contact both clients as quickly as possible. And
 3 that was done. And their response was communicated the next
 4 day to Ms. Betty Ruth Fox who had hosted and chaired the
 5 meeting.
 6 Q. What did you advise Mr. Lucas and Dr. Beall to do
 7 regarding the sale of lots at Big Hill Acres?
 8 A. I advised them to voluntarily stop all sales transactions
 9 immediately as the government had demanded to, again, show a
 10 good faith attempt to promote settlement.
 11 Q. And to your knowledge, did they do that?
 12 A. To my knowledge, they did, yes. Again, that was
 13 communicated the very next day by Mr. Crawford in my absence to
 14 Ms. Betty Ruth Fox, as I recall.
 15 Q. And Ms. Betty Ruth Fox -- was with the Department of
 16 Environmental Quality at that point as an attorney?
 17 A. She was the senior attorney in the room on the 22nd. As I
 18 remember, the junior attorney with her was Ms. Kelly Riley, as
 19 I recall.
 20 Q. So the Mississippi DEQ had been made aware as of June
 21 23rd --
 22 A. Yes.
 23 Q. -- that there would be no further sales of lots at Big
 24 Hill Acres pending the resolution of the matter?
 25 A. That is what was communicated to them as the response of

1 our clients to the government's demand.
 2 Q. Is Mr. Lucas continuing to sell lots that were not
 3 delineated as wetlands by Dr. Sanders?
 4 A. I don't know what was happening on the ground. After the
 5 23rd of -- effective the 23rd of June, we understood that all
 6 sales transactions -- all sales transactions had been stopped.
 7 Q. And that was communicated to Ms. Fox?
 8 A. Yes.
 9 Q. Was it communicated to Ms. Cox?
 10 A. It was communicated to Ms. Fox because she had convened
 11 and hosted the meeting.
 12 Q. Okay. Now, even though that was done on the 23rd of June,
 13 on the 26th of July, Ms. Cox has issued a Section 309
 14 administrative order; correct?
 15 A. That's correct.
 16 Q. And did you review the order that was issued at that time?
 17 A. Yes, we did.
 18 Q. Before we get into the administrative order, tell us, if
 19 you would, Mr. Palmer, what is an administrative cease and
 20 desist order?
 21 A. It is a directive issued pursuant to federal statute,
 22 which allows in this case EPA to order the cessation of certain
 23 activities. It is tantamount to an administrative injunction,
 24 if you will.
 25 Q. And I'm gonna refer you to that administrative order,

1 which the jury has seen before. It is a government exhibit.
 2 MR. WITTMAN: And I believe it's Government Exhibit
 3 133. Your Honor.
 4 BY MR. WITTMAN:
 5 Q. That's just the first page of the administrative order;
 6 correct?
 7 A. Well, it appears to be so.
 8 Q. Let me direct your attention back to page 4 of the order
 9 and specifically to Paragraph 16.
 10 A. Excuse me?
 11 Q. To Paragraph 16, which is not on your screen.
 12 A. Okay. I thought my eyesight was failing there.
 13 Q. Okay. Now, Paragraph 16, is that the portion of the order
 14 which directs Big Hill Acres to cease marketing, selling,
 15 conveying or otherwise transferring title of the property until
 16 after receiving EPA approval of the maps that Dr. Sanders was
 17 working on?
 18 A. That is correct.
 19 Q. Did you discuss this with Mr. Lucas?
 20 A. Yes.
 21 Q. What advice, if any, did you give Mr. Lucas about this
 22 provision of the order?
 23 A. Well, I told Mr. Lucas how surprised we were that the
 24 government would be ordering them to do something that they
 25 stopped doing a month earlier.

1 Q. Okay. In your opinion, was there a need for an
 2 administrative C and D?
 3 A. Well, I didn't think so. But that was my viewpoint from
 4 the vantage point of attempting, again, to move all of these
 5 parties, especially the attorneys, along the lines of
 6 settlement. And especially since in good faith, our clients
 7 had told us that they were going to stop marketing activities.
 8 And we communicated that back to the government and had no
 9 reason to doubt that they were complying with their word.
 10 Q. Did you have any conversations with Ms. Cox at the EPA
 11 following the issuance of this administrative C and D?
 12 A. As I recall, we sent a reply letter, yes.
 13 Q. And other than that, did you have telephone conversations
 14 with her?
 15 A. I don't recall. I could have. But I would have to go
 16 back and look at Butler, Snow records that I haven't seen in
 17 four years to give you an accurate answer on that.
 18 Q. Okay. What were you doing, if anything, in this time
 19 frame regarding getting approval of Dr. Sanders' wetland
 20 delineation?
 21 A. Well, of course, we were making every effort to get that
 22 essential piece of this -- of this matter to closure because so
 23 many things rested on it. Not only the issue of resumption of
 24 the sale of lots, but then all attempts to craft a plan to give
 25 to EPA, a work out in terms of areas that might be restored

1 areas that might be left alone and mitigate, all of those
 2 things had to be deferred until we could get Dr. Sanders' work
 3 to closure.
 4 Q. And did you press Ms. Cox to get that accomplished, to get
 5 those delineations approved?
 6 A. Yes.
 7 Q. Let me show you what's been marked as Defendants' Exhibit
 8 824.
 9 MR. WITTMAN: If I could show it just to the witness
 10 first, Your Honor?
 11 BY MR. WITTMAN:
 12 Q. Do you recognize this as a copy of a letter that you sent
 13 to Ms. Cox on August 3rd, 2000?
 14 A. It appears to be so, yes.
 15 MR. WITTMAN: Your Honor, I offer into evidence
 16 Defendants' Exhibit 824.
 17 THE COURT: Any objection?
 18 MS. HARRIS: No objection.
 19 THE COURT: Without objection, it will be marked and
 20 admitted.
 21 (Exhibit D-824 marked and received in evidence)
 22 MR. WITTMAN: May I exhibit it to the jury?
 23 BY MR. WITTMAN:
 24 Q. And the second paragraph of that letter, Mr. Palmer, does
 25 that refer to the subject you were just talking about with

1 respect to approval of the delineation maps of Dr. Sanders?
 2 A. Yes.
 3 Q. Now, did you also respond to the July 26th cease and
 4 desist order from the EPA?
 5 A. I believe we did, yes.
 6 Q. Let me show you what has been, I believe, received in
 7 evidence as Defendants' Exhibit 818, the letter dated September
 8 12th, 2000, addressed to Ms. Cox.
 9 MR. WITTMAN: And if I may, Your Honor, I'd like to
 10 hand the witness a copy because he can follow along a little
 11 easier?
 12 THE COURT: You may.
 13 THE WITNESS: Thank you.
 14 BY MR. WITTMAN:
 15 Q. And I want to show you just a few portions of that letter,
 16 if I may. First of all, though, before I take the first page
 17 off, that references in that first paragraph your hope that
 18 Ms. Cox had reviewed Dr. Sanders' wetlands report?
 19 A. Yes.
 20 Q. Okay. All right. And if I may, just to move through
 21 this, direct your attention over to page 3. This refers to a
 22 development evolution map?
 23 A. Yes.
 24 Q. Do you see that? Did you send this map to Ms. Cox with
 25 your letter of September 12th?

1 - A. Let me take a moment, Mr. Wittman, to see if we said here
2 we did include it or that it would be sent later. Apparently,
3 we did include it with this letter, yes.

4 MR. WITTMAN: Your Honor, if I could switch over to
5 the screen. And I'd like to exhibit to the jury what has been
6 received in evidence as Government Exhibit 142.

7 BY MR. WITTMAN:

8 Q. Is that a copy of the map that you sent to Ms. Cox,
9 Mr. Palmer?

10 A. It appears to be, yes.

11 Q. Okay. And in this letter, you talk about the development
12 having evolved like a patchwork quilt. Do you recall that?

13 A. I do.

14 Q. What did you mean by that as you look at the exhibit you
15 sent?

16 A. Very early on, we asked Dr. Beall and Mr. Lucas to give us
17 first an itemization of the specific parcels by section,
18 township and range that were included in both the Big Hill
19 Acres and Consolidated Investments portions of what had come to
20 be known, as I've testified already, as Big Hill Acres. Once
21 we got the list, the itemization, again, my preference was to
22 depict all of that on a map so that the evolution of what at
23 that point in time appeared to be a large development did not
24 begin life that way but wound up that way over a number of
25 years through the acquisition of first one parcel, then another

1 particular recitations, mainly the assumptions that were there.

2 Q. Okay. And in the next paragraph, you tell her, do you
3 not, that you're assured by Big Hill Acres and Consolidated
4 that all sales transactions ceased on Friday June 23rd, 2000?

5 A. That's correct.

6 Q. And that's just what you communicated to Ms. Betty Ruth
7 Fox?

8 A. It is.

9 Q. Okay. Now, if you would, I'd like you to tell the ladies
10 and gentlemen of the jury what efforts Big Hill Acres and
11 Mr. Lucas had made to comply with the EPA's demands through
12 this period of time that you're responding to the
13 administrative C and D. You came aboard in April of 2000;
14 correct?

15 A. That's right. Our firm --

16 Q. You're now into September of 2000, about five months?

17 A. Yes. But what we were attempting to do here, Mr. Wittman,
18 is to recount for EPA activities that had taken place during
19 those few months when our firm was engaged here as well as to
20 also recount work that had already been undertaken by
21 Dr. Sanders and by others not only to get the wetlands
22 delineation work done but efforts that had been undertaken by
23 our clients to stabilize areas that had been subjected to
24 erosion and things like that to simply make the government
25 aware of the efforts that were being exerted and the relative

1 parcel and they were all purchased in a way that there was
2 some -- they were contiguous, but they certainly were not all
3 bought at one time.

4 Q. And this was your effort to explain how the project had
5 evolved?

6 A. Yes, it was.

7 Q. Going back to your response to the administrative C and D
8 issued in July of 2000, I want to turn your attention, if I
9 could, to page 5 of your response.

10 MR. WITTMAN: And if I could have back the Elmo, Your
11 Honor?

12 BY MR. WITTMAN:

13 Q. In that second paragraph on that page, you say, "It's
14 unfortunate that the 309 order was based on these assumptions,"
15 and referring to a portion of Ms. Cox's letter to you in which
16 she enclosed the administrative C and D; is that correct?

17 A. Yes.

18 Q. And why did you disagree with Ms. Cox and call her
19 assumptions erroneous?

20 A. Orders that are issued pursuant to this and other sections
21 which empower EPA to issue these orders follow the format that
22 begins with recitations. Those recitations then are followed
23 by mandates. So we took issue with several of the recitations
24 that she set forth in the order, which then became the basis
25 for the mandates. And so we expressed our objections to those

1 costs associated with those efforts to deal with the issues
2 that had been raised.

3 Q. What, if anything, had Big Hill Acres done to deal with
4 erosion at the site?

5 A. Well, as best I recall, it would be typical management
6 practices, placing hay or maybe planting grass, other things
7 like that that would either stop or certainly impede the
8 progress of erosion that had commenced when the timber was
9 removed and left the land largely unprotected.

10 Q. Okay. Is some measure of erosion control necessary when
11 you've had large scale timber operations on a tract of land?

12 A. Well, there again, the answer to your question depends on
13 whether or not the timber cutting operations are a regulated or
14 exempted activity.

15 Q. Okay.

16 A. And if they are a regulated activity, then yes, loggers
17 must employ what's called best management practices in the
18 furtherance of their logging operations. If the exemption is
19 invoked and 404 doesn't apply, then those protective measures
20 are not required. Only in limited circumstances, as I
21 understand it, with respect to access roads and that sort of
22 thing. But the actual logging operations are then exempted.

23 Q. Whether it's regulated or unregulated by the EPA, isn't
24 some effort at erosion control necessary where you have had
25 large scale timber operations?

1 A. Well, after the operations are over, the other dimension
2 of all of this very complex matter that I've mentioned a time
3 or two is the emergence in the 1990s of storm water regulatory
4 provisions. And so there are current requirements for various
5 kinds of activities from construction to mining and to other
6 activities that do require best management practices to prevent
7 sediment from leaving job sites, construction sites that might
8 enter waterways and cause pollution.

9 Q. Now, at some point after June 23rd, 2000, when Big Hill
10 Acres voluntarily stopped selling lots, did you ask the EPA's
11 permission to allow the companies to start selling lots again?

12 A. We did.

13 Q. And I'm gonna show you what's been marked as Defendants'
14 Exhibit 820, a letter that you wrote to Ms. Thanne Cox on
15 October 20. And I ask you if you can identify it.

16 A. It appears to be a copy of that letter, yes. I can't see
17 the letterhead, but --

18 Q. I'll hand you a copy.

19 MR. WITTMAN: I offer into evidence Defendants'
20 Exhibit 820.

21 THE COURT: Any objection?

22 MS. HARRIS: I believe it's Government Exhibit 134,
23 but I'm not sure.

24 THE COURT: Has it already been marked then?

25 MS. HARRIS: It may have been. I don't know if it

1 the earlier request for information that they had received from
2 the EPA?

3 A. As far as we knew, they had. And that's why I mentioned
4 it in this paragraph.

5 Q. Okay. And you go on to say it didn't appear that a final
6 proposal and final resolution would occur soon enough to
7 forestall severe and irreparable harm. What did you mean by
8 that?

9 A. As I mentioned a few moments ago, an ultimate settlement
10 of all issues could not occur until the work product from
11 Dr. Sanders had been finished, had been accepted and then could
12 be used for the additional activities that had to follow in
13 terms of wetlands assessments and mitigation planning.

14 Everything depended on getting that done. And we were simply
15 not there. So it was necessary that we ask for this relief
16 before Dr. Sanders' work was finished.

17 Q. Would that also be true of the after the fact permit that
18 Mr. Lucas was trying to get?

19 A. Oh, yes. That -- if it ever would have occurred, it would
20 have occurred only at the end of the entire process.

21 Q. Okay. Now, did you receive a response from the EPA
22 granting Big Hill Acres the permission to sell certain lots?

23 A. We did. We were very pleased to get that response. It
24 was in the form of a letter.

25 Q. Okay. And this letter is in evidence, I believe. I don't

1 was admitted as that. But if so --

2 THE COURT: Is Government's 134 admitted, Molly?

3 THE CLERK: It has been.

4 THE COURT: That's Government's 134 already.

5 MR. WITTMAN: If I may, Your Honor, I'll refer to it
6 as Government 134, and we'll not offer yet another copy of it.

7 THE COURT: Very good.

8 BY MR. WITTMAN:

9 Q. I just want to refer you to the last paragraph on that
10 page. And tell the jury, if you would, what you were asking
11 the EPA to agree to in this letter.

12 A. Well, as I've already testified, Mr. Wittman, Dr. Beall
13 and Mr. Lucas advised us and we in turn advised the government,
14 specifically DEQ, that they had ceased sales operations on
15 June 23rd. Here we were October 20th, almost three months
16 later, with no income from that source coming in. And we then
17 asked the government -- this was probably our first request of
18 several -- to release some of those parcels for marketing and
19 hopeful sale to begin to regenerate some cash flow.

20 Q. And you were dealing in this request specifically with 55
21 lots?

22 A. Yes, in this request.

23 Q. I just direct you to the last paragraph on page 2 -- or
24 the second to last paragraph on page 2. By October 20th of
25 2000, had Big Hill and Consolidated substantially complied with

1 have the exact government exhibit. I have the --

2 MS. HARRIS: It's 135.

3 MR. WITTMAN: Let me make sure it's the same. It's
4 135?

5 MS. HARRIS: Uh-huh.

6 MR. WITTMAN: Again, I have a defense exhibit number,
7 but I will use the government's exhibit to avoid duplication.

8 BY MR. WITTMAN:

9 Q. Let me show you what is in evidence, Mr. Palmer, as
10 Government Exhibit 135. And let me give you a copy.

11 MR. WITTMAN: May I approach, Your Honor, so --

12 THE COURT: You may.

13 Q. It may help you to follow along. Is that your response
14 from the EPA with respect to your request for relief?

15 A. I believe it is, yes.

16 Q. Okay. And did the EPA grant permission for Big Hill Acres
17 to sell additional lots?

18 A. As I just said, they did. We were very pleased with that.
19 There were some inadvertent mistakes in this letter, which were
20 corrected, but yes.

21 Q. Okay. And there were several different categories of lots
22 that were included in this response from the EPA, were there
23 not?

24 A. That is correct.

25 Q. And the first category which we have on the screen right

1 now relates to property that clearly didn't contain any
2 jurisdictional wetlands that could be marketed and sold
3 immediately?

4 A. That's right. This is what both we and EPA came to call
5 the Category 1 lots, lots which according to Dr. Sanders' work
6 product did not contain jurisdictional wetlands. And so
7 they -- they were released.

8 Q. And the second category was some lots that the EPA claimed
9 contained some jurisdictional wetlands but which had not been
10 impacted; correct?

11 A. That is correct.

12 Q. And I'm just gonna fold this so we can see the second half
13 of this letter, or this page. And permission was given to sell
14 those lots as well?

15 A. Yes. Of course, as I mentioned, some corrections had to
16 be made. Thankfully we were working from those colored maps,
17 not from boxes of paper or this would have been nightmarish,
18 very tedious. But yes, EPA did release some of the lots in
19 Category 2, those that Dr. Sanders had delineated as having
20 some jurisdictional wetlands, but also had found that none of
21 those particular areas showed signs of any of the impacts that
22 EPA had categorized, as I mentioned earlier.

23 Q. The EPA was saying those lots could be sold if you made a
24 disclosure of wetlands?

25 A. Yes. EPA, as a condition for releasing these what I would

1 the extent that they can't be avoided, then proposed impacts
2 must be minimized to the maximum extent possible. And whatever
3 is left over that can't be avoided and minimized, then must be
4 mitigated.

5 And mitigation occurs in several different ways -- can
6 occur in several different ways. There may be additional
7 tracts on the property that would be acceptable to the
8 government for mitigation. There may be tracts off the
9 property owned by the developers. And if all that fails, there
10 are mitigation banks that are available to satisfy those --
11 what's called compensatory mitigation requirements.

12 Q. So is what you're saying that if someone has developed a
13 subdivision and there's some wetlands that happen to be in that
14 subdivision, that it's possible to go to a wetlands bank and
15 provide mitigation property -- different property, if you
16 will -- to make up for the property that was inadvertently
17 included in the subdivision?

18 A. Well, the bank can be used to compensate for the wetlands
19 losses -- that's called functions and values losses -- of that
20 particular wetland ecosystem. And once an assessment is done
21 of the losses, then the developer will be required to
22 compensate for those losses in any one of several ways I've
23 just described.

24 Q. Just to keep it simple for me: You essentially replace
25 wetlands that have been somehow included in a subdivision with

1 call Category 2 lots, said that they would insist that, at the
2 point of sale or advertising for sale, prospective purchasers
3 be given written notice that -- if it applied. That in this
4 case, certainly in Category 2, it did apply. It did not apply
5 to Category 1. That a portion of the property that they were
6 considering for purchase did contain some delineated wetlands
7 according to Dr. Sanders' maps.

8 Q. Then finally, the third category consisted of lots the EPA
9 contended contained jurisdictional wetlands which had been
10 impacted; correct?

11 A. That's correct.

12 Q. And that group of lots, the EPA said could not be sold at
13 all?

14 A. Well, no. EPA said that these Category 3 lots as
15 conditions for sale would, of course, require the notice that
16 they would require for Category 2, but then they would be
17 reviewed only on a case by case basis, as the letter states.
18 But then the additional condition would be premitigation of
19 four of those identified alterations or impacts that appeared
20 on Dr. Sanders' maps.

21 Q. What do you mean by premitigation?

22 A. When a subdivision is submitted to the Corps of Engineers
23 for review and approval, if there are delineated wetlands on
24 the property, then the law is going to require that those
25 wetlands areas first be avoided, if at all possible. And to

1 other wetlands that can compensate for it; is that right?

2 A. Yes. And of course, that would apply not just to
3 subdivisions but industries or anything else, any development
4 where regulated wetlands are involved.

5 Q. All right. Did you advise your clients they could sell
6 the lots that had been released by the EPA?

7 A. I did. As I mentioned earlier, our firm requires that we
8 transmit correspondence like this to our clients. We did. And
9 our instructions, as we said earlier, were to meticulously
10 comply with what the government had specified here so that they
11 could begin to regenerate some income.

12 Q. Okay. Did you respond to Ms. Cox on or about November
13 1st, 2000?

14 A. I believe I did, yes.

15 Q. And I'll show you what is in evidence as Defendants'
16 Exhibit 822, which is a letter from you to Ms. Cox?

17 A. Yes. It appears to be so, yes.

18 Q. You responded pretty quickly, didn't you?

19 A. Well, if the dates --

20 THE REPORTER: I didn't hear what you said.

21 BY MR. WITTMAN:

22 Q. You have got a letter dated October 31, and you responded
23 November 1?

24 A. I would call that quick.

25 Q. You were in a hurry to sell some lots, were you?

1 A. I wasn't, but the clients were.

2 Q. And you then go on to say or discuss with her -- I think
3 you referred earlier in your testimony to some typographical
4 errors or whatnot. I don't want to get into that. But you --
5 to summarize, you discussed some minor inconsistencies between
6 what you had requested and what they agreed to, correct?

7 A. That's right. This is very intricate analysis, and some
8 inadvertent mistakes were made in EPA's review. We called
9 those to their attention, which they then -- they later
10 corrected.

11 Q. All right. Then you tell her, do you not, on page 2 that
12 you understand her position on the third category of lots right
13 here, but you wanted to study that some more, right?

14 A. Yes.

15 Q. And finally, in the second to last paragraph, you tell her
16 that additional lots were coming available for resale because
17 of defaults and resulting foreclosures. That's the portion I
18 highlighted there. What did you mean by that when you talked
19 about the additional lots becoming available for resale?

20 A. Well, we learned from Dr. Beall and Mr. Lucas that -- bear
21 in mind now, this was late 2000 and properties had been sold
22 for a period in excess of six years by this time. In the
23 course of those six years, some of these sales transactions had
24 failed for various reasons causing the property to be returned
25 to the inventory of the corporations. And those -- the

1 locations of those lots were, of course, at random all over the
2 development. Since they came back into inventory, then our
3 clients wanted to have the opportunity to remarket them -- to
4 resell what had already been sold, developed and occupied in
5 years past.

6 Q. In the normal course, would the resale of a lot that had
7 been sold years earlier involve any need to be concerned over a
8 Section 404 permit from the Corps of Engineers or the EPA?

9 A. Well, it depends on where the lot is. First of all -- but
10 in terms of the sale of the property itself, we've covered that
11 several times. We're back to the fact that there is no
12 prohibition in Section 404 pertaining to sales.

13 Q. There would be no prohibition on resale, I take it?

14 A. Well, a resale is a second sale.

15 Q. Okay. Fair enough. After you got Ms. Cox's letter of
16 October 31, 2000, what advice, if any, did you give Mr. Lucas
17 and Dr. Beall regarding language in the sales contracts that
18 they were using to notify purchasers that the property may
19 contain wetlands?

20 A. When we got copies of the -- what I call the transactional
21 documents, the contracts, that had been used to effect the
22 sales of these lots over a number of years -- early on, the
23 firm said our job is wetlands and environmental issues. We're
24 not going to presume to deal with your transactional documents.
25 They had made one or two changes to those documents of their

1 own. But we did say, given what the government was insisting
2 upon in that letter, that it was absolutely essential that with
3 respect to Category 2 lots, that the disclosure statement be
4 used in every case and that the disclosure statement and
5 attending contract be submitted to EPA, as EPA required.

6 Q. Okay.

7 A. We recommended strict compliance with the government's
8 protocols.

9 Q. Did Dr. Beall and Mr. Lucas include language in the
10 contracts after that time identifying possible wetlands?

11 A. Well, they included the notice that the government
12 required and that the government prepared in those sales
13 contracts. As I just mentioned, I recall two changes that they
14 made in their own sales agreement. I don't recall the specific
15 nature of the second change. But they did add some language to
16 their own sales agreement. That was not part and parcel of the
17 EPA required notice.

18 Q. Are there any magic words in the Clean Water Act that
19 would be required notification language that you know of?

20 A. Not in the Clean Water Act, no.

21 Q. And -- well, are there any specific regulations in there
22 that tell you what kind of language you're supposed to use?

23 A. Clean Water Act regulations?

24 Q. Yes.

25 A. I'm not aware of any.

1 Q. Okay. Did you advise Mr. Lucas to make any use of the
2 delineation maps -- the wetlands delineation maps that
3 Dr. Sanders was working on?

4 A. We did.

5 Q. What did you tell them to do?

6 A. Dr. Sanders' work had progressed substantially by that
7 time. As I mentioned earlier but did not explain, Dr. Sanders
8 was having some significant technical difficulties with his
9 cartographer, his contractor, in converting field data through
10 a computer system to maps. But notwithstanding that, we
11 recommended that these maps be -- I remember specifically
12 recommending that they be mounted and made available at the
13 sales office wherever folks were talking about buying property
14 so that not only they could be -- they could discuss it, but
15 they could actually see on Dr. Sanders' maps the specific
16 conditions that he had depicted on those maps.

17 Q. And did you also suggest they make copies of the wetlands
18 delineations available to prospective purchasers?

19 A. Yes.

20 Q. Now, moving on through the fall -- we're down to, I guess,
21 the last thing I showed you, November 1st of 2000. Throughout
22 the fall of the year 2000, Mr. Paimer, would you describe what
23 you did to assist your clients in complying with the concerns
24 of the Environmental Protection Agency to resolve this matter?

25 A. As I mentioned several times, the main effort that we were

1 trying to move along was the Sanders' work. And I've said
2 repeatedly that that was the main thing that stood in the way
3 in our view of negotiating a final settlement with EPA.

4 Now, collateral to the wetlands issues and all of that, of
5 course, there were ongoing issues with the state Department of
6 Health about on site wastewater systems. But in terms of what
7 we were trying to do is simply, again, to repeat myself over
8 and over, move the matter towards settlement. We had asked for
9 an on site meeting with representatives of EPA and the
10 Department of Justice, which occurred, so that we could all
11 drive the property. So we were doing things like that, again,
12 trying to move the matter along.

13 Q. In that connection, did you recommend to Mr. Lucas and
14 Dr. Beall that they retain additional experts to assist them in
15 drafting a comprehensive mitigation plan? We talked about
16 mitigation a moment ago. Did you advise them to do that?

17 A. I did. We did. Mr. Crawford and I did.

18 Q. Did they do it?

19 A. They did. But it came a little bit later. But we got to
20 a point where the Sanders' work was essentially complete. I
21 say essentially because, frankly, we were not able to resolve
22 the technical difficulties that Dr. Sanders was having with his
23 cartographer. And the time simply came to put the work to bed.
24 And so we put the work to bed, acknowledging that there
25 probably were errors in the work. But we were hoping -- and

1 EPA as well -- that the errors would be relatively
2 insignificant in the larger scale of things.

3 But then the next phase of our efforts to craft a work out
4 had to then begin. We recommended after conversations with
5 Dr. Sanders that new team members be brought in to do two
6 specific things. That is, the wetlands assessment -- I
7 referred to that a little bit ago -- to take Dr. Sanders' work
8 product and then get on the ground and do their specialized
9 work to do wetlands assessments. And then based on their own
10 conclusions about restoration versus mitigation or both, to
11 prepare a plan to be submitted to EPA for consideration as the
12 ultimate basis for resolution of the wetlands issues.

13 Q. And who were those people?

14 A. The firm is Wildlife Technical Services, Incorporated.
15 It's in Vicksburg, Mississippi. The principals at that time --
16 I don't know if they still are -- were Mr. Bill Tomlinson and
17 Mr. Mike Goff.

18 Q. Did anything happen in November of 2000 to cause a problem
19 for Big Hill Acres in terms of resolving this matter?

20 A. Well, I don't know what you're referring to, Mr. Wittman,
21 but the situation in the whole community had become very
22 agitated and unsettled over not only the wetlands issues.
23 There was a good bit of press coverage of those issues and the
24 wastewater issues. The degree of tension in the community
25 about that time had risen substantially, if that's what you're

1 referring to.

2 Q. Well, let me show you what's been received in evidence as
3 Government Exhibit -- it's actually a defense exhibit, too.
4 Defense Exhibit 823. I don't have the government's number.
5 Have you ever seen this public notice dated November 3, 2000?

6 A. I have.

7 Q. And when did you first see it?

8 A. Well, as best I recall, either on or after November 3rd,
9 2000.

10 Q. Did Ms. Cox or anybody else at the EPA give you any notice
11 that the EPA intended to send this notice out?

12 A. Not this specific notice. In an earlier letter before
13 Ms. Cox left Region 4 and Mr. Schwartz took over the file, she
14 said in one of the letters that she sent to me that they were
15 concerned about public reaction to these exhibits and the
16 public awareness of these issues. And that they were about to
17 embark upon a public information and outreach campaign of some
18 sort. She did not, as I remember in that letter, specify what
19 it would be. But we then ultimately took this to be that.

20 Q. And did she ever tell you that they were gonna send this
21 to all residents of Big Hill Acres?

22 A. We had no discussions, as I remember, at all about this
23 document prior to the time it was released. And as memory
24 serves me correctly, even thereafter.

25 Q. Okay. And what was your reaction to this notice?

1 A. Well, our concerns, of course, again, were to try to work
2 through these very difficult issues, to deal with other
3 problems that were arising with respect to septic systems that
4 people were reporting not working properly. And I honestly --
5 my personal opinion about this was that it was -- it was beyond
6 simply informative. It was inflammatory.

7 Q. All right.

8 MR. WITTMAN: May I have just the screen for the
9 witness, Your Honor?

10 BY MR. WITTMAN:

11 Q. Let me show you what's been marked for identification as
12 Defendants' Exhibit --

13 THE COURT: You want the document cam?

14 MR. WITTMAN: I'm sorry. I just wanted the witness
15 to be able to see it, not the jury. That's all.

16 THE COURT: I'm sorry. I misunderstood what you
17 said. Go ahead.

18 MR. WITTMAN: Okay.

19 BY MR. WITTMAN:

20 Q. I'm gonna show you what's been marked for identification
21 as Defendants' Exhibit 825 and ask if you can identify that.

22 A. It appears to be a letter from me to Dr. Beall and
23 Mr. Lucas.

24 Q. Okay.

25 MR. WITTMAN: Your Honor, I offer into evidence

1 Defendants' Exhibit 825.

2 THE COURT: Any objection?

3 MS. HARRIS: Your Honor, we've already addressed this
4 at the bench.

5 THE COURT: What is your objection? I know you
6 addressed it at the bench. Specifically what is your objection
7 to this document?

8 MS. HARRIS: That it was not provided in discovery,
9 and it's irrelevant.

10 THE COURT: You can mark it for identification
11 purposes, and the witness can testify regarding what occurred.

12 MR. WITTMAN: Okay.

13 (Exhibit D-825 marked for identification)

14 BY MR. WITTMAN:

15 Q Well, tell us -- tell the jury, if you would, Mr. Palmer,
16 based upon your recollection of events at the time -- and if
17 that letter refreshes, you may refer to it -- what advice, if
18 any, you gave to your clients after that EPA public notice was
19 issued.

20 A. Well, I can't see the whole letter. I see a couple of
21 paragraphs. Could I see the whole letter, please?

22 Q. There you go.

23 A. Okay.

24 Q. I think that's it.

25 A. Well, this is an example of a lawyer being mad. And I

1 toxics management division in EPA Region 4. One of the senior
2 staff members there. At the time I wrote this letter to her,
3 she was the director of the water management division and had
4 just assumed that new responsibility, as I recall, in Region 4.

5 Q. I want to direct your attention, if I may, to the last
6 paragraph on the page. You tell Ms. Banister that a
7 jurisdictional determination had not been made; is that
8 correct?

9 A. That's correct.

10 Q. And one of the central issues in this case before this
11 jury is whether the federal government has any regulatory power
12 over Big Hill Acres and Mr. Lucas under Section 404 of the
13 Clean Water Act, isn't it?

14 A. Yes.

15 Q. Did you continue to press for an on site meeting? I think
16 you've mentioned that earlier.

17 A. Yes.

18 Q. And why did you want an on site meeting at this point in
19 December of 2000?

20 A. Well, at that time -- and I don't remember exactly when it
21 occurred -- the Department of Justice became involved in the
22 matter along with EPA Region 4 personnel, both program and
23 legal. So I simply reiterated my belief that we would all be
24 better served by getting together down here near the
25 development so that we could all -- especially for the new

1 was. And I was writing to my clients because they were as
2 well. And I just expressed my feelings on that point. But in
3 the face of that, I still came back to our efforts to move
4 forward to try to get to resolution.

5 Q. Did you believe that the Environmental Protection Agency
6 was employing unethical tactics?

7 A. Well, I said it in this letter. And if I didn't believe
8 it, I wouldn't have said it.

9 Q. Did you advise your clients what recourse, if any, they
10 had at this point?

11 A. Well, it's right there on the screen. These processes
12 ultimately, ultimately will lead to a point where respondents,
13 in this case in an administrative action, will have their day
14 in court. But they don't get there for a long time.

15 Q. Despite all of that, did you continue to try and reach an
16 amicable settlement of this problem with the EPA?

17 A. Well, of course. We had no reason to deviate from our
18 plan.

19 Q. Let me refer you, if I may, to Defense Exhibit 827 and ask
20 you if you identify that as the letter you wrote on December 7,
21 2000, to Ms. Beverly Banister --

22 A. Yes.

23 Q. -- with the EPA. And first of all, tell us who is
24 Ms. Banister?

25 A. Ms. Banister now is the director of the air pesticides and

1 Department of Justice personnel -- recall and reflect on
2 everything that had gone on and to then move from this
3 inspection of the premises, as we would call it, into our
4 settlement discussions.

5 Q. Okay. And let me show you what's been marked --

6 MR. WITTMAN: I think Exhibit 827 has been received
7 in evidence. I'm not sure. So I'll offer it again just to
8 make certain. We would offer Defense Exhibit 827.

9 THE COURT: Has it got a corresponding government's
10 exhibit number? Because it has not been admitted as a defense
11 exhibit.

12 MS. HARRIS: It does not, Your Honor.

13 THE COURT: You can show it to the witness.

14 MR. WITTMAN: He's identified it.

15 THE CLERK: He just did.

16 MR. WITTMAN: He just did. He identified it.

17 MS. HARRIS: To everybody.

18 MR. WITTMAN: I thought it had been offered. But I
19 was in error. But I will now offer it.

20 THE COURT: Any objection?

21 MS. HARRIS: Not at this point, Your Honor.

22 THE COURT: Without objection, it will be marked and
23 admitted.

24 (Exhibit D-827 marked and received in evidence)

25 THE COURT: Please try to remind me -- since I am the

1 one controlling the video, if there is a document that's not
2 been admitted, either side, please remind me to.

3 MR. WITTMAN: I thought that one had. That was not
4 one counsel indicated an objection to this morning. I thought
5 it had been admitted. Let me make sure.

6 THE COURT: It's admitted now.

7 MR. WITTMAN: Any objection to that?

8 MS. HARRIS: No.

9 BY MR. WITTMAN:

10 Q. I show you a copy of a letter dated September 21st, 2000,
11 Mr. Palmer, from the Environmental Protection Agency and ask
12 you if you recognize that as a response from Mr. Schwartz to
13 your earlier letter.

14 A. I do.

15 Q. Okay.

16 MR. WITTMAN: Offer into evidence, Your Honor,
17 Defendants' Exhibit 828.

18 MS. HARRIS: No objection.

19 THE COURT: Without objection, it will be marked and
20 admitted.

21 (Exhibit D-828 marked and received in evidence)

22 BY MR. WITTMAN:

23 Q. And I just want to show you one thing on the second page
24 in the second to last paragraph. Mr. Schwartz tells you that
25 the Department of Justice is now involved in this case and will

1 A. Yes.

2 MR. WITTMAN: If I may, let me approach the witness
3 and give him a full copy of that, Your Honor.

4 BY MR. WITTMAN:

5 Q. This is Defense Exhibit 829.

6 MR. WITTMAN: And we would offer Defendants' Exhibit
7 829 into evidence at this point.

8 MS. HARRIS: No objection.

9 THE COURT: Without objection, it will be marked and
10 admitted.

11 (Exhibit D-829 marked and received in evidence)

12 BY MR. WITTMAN:

13 Q. You mentioned earlier some problems that Dr. Sanders was
14 having with maps. And take a look at what you have described
15 here as the cartographer issue. And tell the jury, if you
16 would, what problems Dr. Sanders was having with respect to the
17 aerial photography.

18 A. As best I recall -- and to condense what would otherwise
19 be a long answer -- Dr. Sanders in the field generated various
20 kinds of data. Some of that data was recorded manually on
21 field notes. Some of that data was recorded, as I recall,
22 electronically with various modern devices that these gentlemen
23 and ladies use.

24 He then took his field notes and data to a cartographer,
25 Ms. Ann Eldridge, I believe, and asked her to convert his field

1 participate in all negotiations to resolve the enforcement
2 case?

3 A. Yes.

4 Q. Was that your first notice that the Department of Justice
5 had become involved in this case?

6 A. I believe it is, yes.

7 Q. What significance, if any, did you attach to that?

8 A. Well, I appreciate it much more now in my current position
9 than I did then. But at a point in these enforcement cases,
10 EPA must make a decision about going forward at the regional
11 level or referring the matter, as it's called, to the
12 Department of Justice, which then brings DOJ into the matter
13 and could bring in all of the various components within the
14 Department of Justice.

15 Q. Okay. And even after the entry of the Department of
16 Justice, did you continue into the year 2001 to work toward
17 what you've called an ultimate resolution of the matter?

18 A. Oh, yes. We did have the meeting down here. We had
19 another one, I think -- I'm trying -- yeah, must have been one
20 after the one on the Coast. We met in Atlanta in a continuing
21 effort to, as I keep saying, move the matter along.

22 Q. Okay. Let me refer you to a letter dated February 28th,
23 2001. Get us into the year 2001 now. It's a letter from you
24 to some people at the Department of Justice and also to the
25 EPA; correct?

1 work into maps using her computers, her plotters and, of
2 course, the software that had to take Dr. Sanders' work and
3 convert it magically in a computer to produce maps like the one
4 you've already shown. And he was having difficulty somewhere
5 in the software. The transfer of the data was not coming out
6 on the maps precisely as he thought it would.

7 Q. Was the problem the computers weren't producing what he
8 had actually seen -- observed on the ground?

9 A. Correct.

10 Q. Now, moving on, if we may. Ask you to turn to page 4 and
11 ask you did you continue to have concerns over the failure to
12 include the timber companies in these discussions?

13 A. Well, we did because we got to a point in -- what I
14 referred to a moment ago as the hand off that occurred from
15 Dr. Sanders to Mr. Goff and Mr. Tomlinson, who would then do
16 the wetlands assessment and generate the mitigation report.
17 And it is at that point that the actual impacts to delineated
18 wetlands were going to be given a serious review by these other
19 two men.

20 And we simply raised, again, that at this point we
21 contended that it was very difficult to precisely allocate
22 responsibility for who did what, when and where, but that we
23 would move ahead anyway and work toward a global resolution by
24 settlement. And though, if that settlement effort failed, then
25 we reserved the right -- as I said in the middle of that page

1 then we would continue to assert our original contentions about
2 the obligations of other parties.

3 Q. Directing your attention to the bottom of the page, did
4 you have discussions -- did you address the issue of failing
5 septic systems?

6 A. Oh, absolutely.

7 Q. And what was your evaluation of the septic system issue?

8 A. Well, as I mentioned earlier, Dr. Beall and Mr. Lucas
9 advised us early and at several points during these months --
10 intervening months that they were getting reports from property
11 owners that septic systems were not working properly. By the
12 time we got to this stage of the situation with the conditions
13 in the community very tense, our main focus was to simply fix
14 things. And that was our recommendation to Mr. Lucas and
15 Dr. Beall, that every effort be made to respond to problems
16 that were reported regardless of whose lot they were on, when
17 they were installed, why the malfunction occurred. That we
18 felt it was in everybody's best interests to help people who
19 needed help.

20 Q. And that's essentially what you say at the top of page 5
21 of this letter, is it not?

22 A. Yes.

23 Q. Providing relief to a particular property owner?

24 A. Yes.

25 Q. What was your understanding as to how many failing septic

1 systems had been reported at this point in time?

2 A. Well, as I recite in the next paragraph, when we asked
3 that question of our clients, we were told that they understood
4 that there were about a dozen lots of approximately 600 that
5 were out there. About a dozen problem systems.

6 Q. Okay. And did you make any effort to find out what was
7 causing the problems to the systems at Big Hill Acres that had
8 been reported?

9 A. Well, we didn't in the firm. We asked Dr. Beall and
10 Mr. Lucas to try to get information. And either they got it
11 individually from talking with landowners or they made inquiry
12 through their installer that had installed these systems. I
13 don't know where they got their information, but we asked them
14 to help us better understand what these problems were that were
15 being reported.

16 Q. Did you have any understanding as to whether
17 malfunctioning septic systems had been reported on lots where
18 there were no wetlands at all?

19 A. That's what our clients said to us, yes, that there were
20 instances where there were problems reported on lots where
21 there were no wetlands delineated.

22 Q. What was Mr. Lucas' position regarding repair of
23 malfunctioning septic systems?

24 A. To go fix them.

25 Q. Okay. Did Mr. Lucas and Dr. Beall undertake to have

1 repairs made to failing septic systems regardless of the reason
2 for the failure?

3 A. As best I remember, they did. Or whether warranties had
4 expired, that really didn't matter. These two men said, "Given
5 the tensions in the community, we just need to solve problems."

6 Q. Okay. If I may refer you to page 6 of the letter, in
7 which you again deal with the subject of the resale of
8 additional lots for resale -- release of additional lots for
9 resale; correct?

10 A. Yes.

11 Q. Explain to the jury, if you would, Mr. Palmer, what you
12 were trying to do with respect to the release of these
13 additional lots for resale.

14 A. As I mentioned earlier, we and EPA gravitated to a point
15 of talking about these lots in terms of categories. And again,
16 the first category were lots on which Dr. Sanders found no
17 wetlands to delineate. The government had already released a
18 number of those unconditionally. The second category were lots
19 where Dr. Sanders on his maps did delineate wetlands, but did
20 not delineate any alterations or impacts to those wetlands.
21 And the third category were lots, as I've already mentioned,
22 where Dr. Sanders not only delineated wetlands, but also
23 depicted on his maps evidence of alteration or impact according
24 to the categories that EPA had earlier specified. And we were
25 attempting -- and these letters so state -- we were really

1 focused on the Category 3 lots because --

2 Q. Why is that?

3 A. Well, as I mentioned earlier, the condition that had --
4 the conditions which had been specified for sale were not only
5 case by case review, but permit mitigation of the impacts per lot.
6 And so we raised concerns in this letter about that because we
7 were -- we were trying to work toward a settlement that would
8 mitigate all impacts everywhere or restore some where
9 restoration was agreed to. And we felt that EPA was just --
10 straining regarding the Category 3 lots. And so we went back
11 again and asked for relief there.

12 Q. Did you tell Mr. Schwartz that at the bottom of page 7 of
13 the letter we were just discussing? I'm referring to the last
14 sentence on that page.

15 A. Yes.

16 Q. Okay. You said it would not enhance our restoration
17 mitigation plan or otherwise just like Category 2 lots;
18 correct?

19 A. That's true. Because we at that time had Mr. Goff and
20 Mr. Tomlinson at work. And they were looking at the -- at the
21 entire area, as I recall. And it may have even been reflected
22 in this letter. We all realized, as did EPA, that we had no
23 current imagery for the site that was more current than like
24 1996. Our clients offered to have an overflight done and to
25 pay for it. That was done to provide not only our wetlands

1 consultants but also EPA wetlands personnel the most current
2 imagery to work with, to then look at mitigation and
3 restoration issues, to then prepare the plan.

4 THE COURT: Let's try to hold that thought and take
5 the noon recess. Ladies and gentlemen of the jury, it seems
6 like an opportune time for you to take the noon recess. We're
7 going to get back in the habit, as you may recall, of me
8 telling you what to do during your noon recess.

9 Please don't talk with anyone about this case or permit
10 anyone to talk with you about it. In the event that anyone
11 attempts to approach you concerning this case, you should
12 report that to the Court immediately. In the event that this
13 case is reported in the media, please don't read anything about
14 it in the newspaper. Please don't listen to any radio or
15 television newscasts concerning it.

16 And as always, during the noon recess or any other time,
17 for that matter, do not attempt to make any independent
18 investigation or research concerning this case on your own.
19 You are to be guided solely and exclusively by the evidence
20 that you hear here in the courtroom.

21 I'll see you at 1:30. Thank you. 1:30, yes. That should
22 be plenty of time.

23 (Jury out at 12:20 p.m.)

24 THE COURT: Very well. We'll be in recess until
25 1:30.

1 your request for me to reverse myself is denied.
2 I'll see you at 1:30.
3 (Recess at 12:21 p.m.)
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1 MS. HARRIS: Your Honor, could I ask one thing before
2 we leave?

3 THE COURT: I'm sorry. I didn't hear you.

4 MS. HARRIS: I'm just waiting for the door to shut.
5 I would ask that the Judge reverse its ruling on treating this
6 witness as adverse. I think he's shown himself to be anything
7 but adverse. And that there be no more leading from here on
8 out.

9 THE COURT: Well, adverseness -- my interpretation of
10 the rule is, is the witness sufficiently identified with one
11 side or the other to permit some leniency. I think under the
12 circumstances, Mr. Palmer, who is now head of the region, the
13 EPA, is sufficiently identified with government that some
14 leniency should be provided. And I intend to provide that
15 leniency to both sides.

16 MS. HARRIS: Just for the record, I point out he made
17 it clear when he started to testify that he was here in his
18 personal capacity and not as the regional administrator.

19 THE COURT: I'll let the jury evaluate.

20 MR. WITTMAN: As a matter of fact, given that
21 position, he's required to have that statement made. That's
22 why I asked the question.

23 THE COURT: I think Mr. Palmer is making his best
24 efforts to be candid and truthful. And I'll give both sides
25 some leniency on leading questions. If it requires a ruling,

Westlands

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Page 3986

file

1 (February 9, 2005, 1:36 p.m.)

2 (Off the record discussion)

3 THE COURT: Are the parties ready to proceed?

4 MR. WITTMAN: Yes, Your Honor.

5 THE COURT: Bring in the jury, please.

6 (Jury in at 1:37 p.m.)

7 MR. WITTMAN: May I proceed, Your Honor?

8 THE COURT: You may. Thank you.

9 BY MR. WITTMAN:

10 Q. Good afternoon, Mr. Palmer.

11 A. Good afternoon, Mr. Wittman.

12 Q. Before the noon break, we were looking at a letter that
13 you had written to Mr. Schwartz of the EPA on February 28th,
14 2001. Do you recall that?

15 A. I do.

16 Q. I just have a couple more things to talk to you about on
17 that letter. If you would, turn to page 8 of the letter. And
18 that second to the last paragraph on the page about midway
19 down, you refer to an apparent campaign or an apparent crusade
20 to destroy Big Hill Acres. What did you mean by that?

21 A. This was my characterization -- and again, another example
22 of a lawyer being mad when you write a letter -- of my
23 impression of the situation that had come about in the
24 community with several meetings in the community. Newspaper
25 articles attributing statements to various folks, including

1 government officials, which -- and I used the word earlier
2 inflammatory. And it just struck me as -- here we were trying
3 to move matters along to a satisfactory end. And the situation
4 in the community was not only agitated, was being exacerbated.
5 And that was the opinion I was expressing there.

6 Q. At the end of that page, did you refer specifically to the
7 involvement of EPA officials in that activity?

8 A. I did.

9 Q. And finally, if you would, turn to the last page and the
10 first full paragraph.

11 A. Yes.

12 Q. What did you mean by saying that the government had
13 decided to run a real estate business located in Jackson County
14 from remote offices in Atlanta and Washington?

15 A. As I mentioned before the lunch break, we had made some
16 substantial progress, frankly, with EPA with respect to two of
17 the three categories of lots. We had gotten substantial relief
18 with respect to the Category 1 lots.

19 We had gotten substantial but conditional relief with
20 respect to the Category 2 lots, lots where, as I mentioned,
21 Dr. Sanders had delineated not only the presence of wetlands,
22 but did not depict any alteration or impact. And as I said
23 earlier, we agreed with the requirements of EPA that any
24 proposed sale of those properties be accompanied by full
25 disclosure. We talked about using Dr. Sanders' maps in the

1 context of that.

2 We were stuck still on the Category 3 lots where the
3 agency offered to review things on a case by case basis. I
4 understand that perfectly well, and I did then. But my point
5 that I was making here and made additionally is the practical
6 reality of doing that when a prospective purchaser appeared to
7 consider a parcel and became interested in it and was ready to
8 go forward and at that point then whoever was handling the
9 transaction for the companies would say, "Well, we have to stop
10 and call Atlanta, Georgia, and get EPA into the sales process
11 with this approval." And my -- the point of my concern is that
12 the risk of losing that opportunity was substantial. And
13 that's the point I was making.

14 Q. And did Mr. Schwartz respond to your letter?

15 A. I believe he did.

16 Q. Let me show you what's been marked as Defendants' Exhibit
17 832, a letter dated March 19th, 2001, to you from Mr. Schwartz.

18 MR. WITTMAN: And if I may, Your Honor, I'll hand a
19 copy to the witness so he can follow us.

20 BY MR. WITTMAN:

21 Q. Can you identify that as a copy of the letter, Mr. Palmer?

22 A. Yes, it appears to be.

23 MR. WITTMAN: Your Honor, I offer into evidence
24 Defendants' Exhibit 832.

25 THE COURT: Any objection?

1 MS. HARRIS: No objection.

2 THE COURT: Without objection, it will be marked and
3 admitted.

4 (Exhibit D-832 marked and received in evidence)

5 BY MR. WITTMAN:

6 Q. Let's just -- I want to turn to page 2. And just looking
7 at the portion I've highlighted on the screen, just to set
8 us -- this letter is in response to your November 1st letter,
9 correct?

10 A. Yes.

11 Q. And dated March 19th? So there had been some five months
12 that had elapsed during which you had no response concerning
13 your request for approval of sale of additional lots?

14 A. That's correct.

15 Q. I want to refer you to one -- toward the end of the
16 letter, if you would. Down toward the bottom of the page.
17 Second paragraph from the bottom. Mr. Schwartz tells you,
18 doesn't he, that any hardship created by the EPA's
19 restrictions, he claims are attributable to your clients'
20 serious and widespread violations of the Clean Water Act. Do
21 you see that?

22 A. I do.

23 Q. Did you disagree with Mr. Schwartz's contention that your
24 client had violated the Clean Water Act?

25 A. Well, I disagreed with the way Mr. Schwartz phrased his

1 point. Frankly, I took it as another example of a lawyer
2 writing when he was mad.

3 Q. Why did you disagree with Mr. Schwartz?

4 A. Well, he characterized the violations that the government
5 asserted as being widespread and intentional. I simply took
6 umbrage at the characterization of the situation at hand.

7 Q. Had your clients intentionally violated the Clean Water
8 Act, Mr. Palmer?

9 A. Well, as I said when we started this morning, our clients
10 told us at the outset they didn't know what Section 404
11 wetlands were.

12 MS. HARRIS: Your Honor, I object to that.

13 THE COURT: What is the basis of your objection?

14 MS. HARRIS: Whether they violated the Clean Water
15 Act is for the jury to decide.

16 THE COURT: Objection is overruled. You may proceed
17 with your answer, Mr. Palmer.

18 A. As I said earlier, after they said to my partner and
19 myself initially that they -- that they did not understand what
20 Section 404 wetlands were and proceeded to describe the
21 evolution of their -- of their development out in this area,
22 then repeatedly they contended that they never intended to
23 violate any law.

24 Q. And did the actions that were taken after June of 1999 by
25 Mr. Lucas and Big Hill Acres represent their efforts to make up

1 for any possible alleged violation of Section 404?
 2 A. Well, as I answered your question this morning, they
 3 immediately began to be as responsive as they could be, at
 4 least to the knowledge of my firm, with EPA and EPA's
 5 requirements and demands.
 6 Q. Let me refer you now to a letter -- you responded, of
 7 course, to Mr. Schwartz, did you not?
 8 A. I likely did. The letter, though, Mr. Wittman, is at a
 9 point when there was a hand off going on in the lawyer ranks at
 10 EPA. The earlier letters that you have shown me were sent by
 11 Thanne Cox. At this point in time, as I have already
 12 mentioned, Ms. Cox moved from Region 4 to another region.
 13 So the file then came under new management, as it were, by
 14 Mr. Schwartz. And as Mr. Schwartz said in this letter, there
 15 was a bit of a fumble during that hand off that took a long
 16 time to recover the fumble, but I accepted what he said in
 17 explanation of that.
 18 Q. Okay. Let me show you what's been marked for
 19 identification as Defendants' Exhibit 830. Let me hand you a
 20 copy of that. Is that a copy of your response to Mr. Schwartz?
 21 A. It appears to be, yes.
 22 MR. WITTMAN: Your Honor, offer into evidence
 23 Defendants' Exhibit 830.
 24 THE COURT: Any objection?
 25 MS. HARRIS: I don't know what it is.

1 MR. WITTMAN: I gave you a copy of all those this
 2 morning.
 3 MS. HARRIS: I don't know which one it is. No
 4 objection. That's actually already in evidence.
 5 THE COURT: What is the corresponding government's
 6 exhibit number?
 7 MS. HARRIS: That is Government's Exhibit 136.
 8 THE COURT: Thank you, Ms. Harris.
 9 MR. WITTMAN: I will accept the government exhibit,
 10 Your Honor, and remark mine.
 11 BY MR. WITTMAN:
 12 Q. I just had one question on this document I'd like to have
 13 you clear up for us, if you would, Mr. Palmer. In the first
 14 paragraph of the letter, the part that I've highlighted relates
 15 to your decision to support or oppose the WJCUD expansion
 16 proposal on a possible supplemental environmental project.
 17 What was that all about?
 18 A. In an earlier letter, I believe, over the signature of
 19 Thanne Cox that you've not shown me today thus far, I don't
 20 think she outlined on behalf of EPA the elements of a
 21 conceptual settlement, which we had asked for. And in that
 22 letter, she identified, I think, four specific components of a
 23 conceptual settlement, each of which, of course, left a lot of
 24 further work and discussion ahead. But one of the, I think,
 25 four components was the government's interest in seeing that a

1 central wastewater system -- maybe central water and wastewater
 2 system be installed throughout this area.
 3 Q. Okay.
 4 MS. HARRIS: Your Honor, if I could correct the
 5 record, Government Exhibit 136 is a different March 2, 2001,
 6 letter, not this one. I'm sorry about that.
 7 THE COURT: Do you have any objection to Defendants'
 8 Exhibit 830?
 9 MS. HARRIS: No, Your Honor, I don't.
 10 THE COURT: All right. Then, without objection,
 11 Mr. Wittman, you may mark and the clerk will admit Defendants'
 12 Exhibit 830 into evidence.
 13 MR. WITTMAN: Thank you Your Honor.
 14 (Exhibit D-830 marked and received in evidence)
 15 BY MR. WITTMAN:
 16 Q. Did you explore the possibility of getting a central
 17 wastewater collection system at Big Hill Acres?
 18 A. Well, we did it reacting to events in the area that had
 19 already begun to unfold. The West Jackson County Utility
 20 District had begun considering an expansion of their system to
 21 the east. And at a point in time when they were attempting to
 22 meet the requirements of their enabling legislation in order to
 23 initiate an expansion, they contacted Dr. Beall and Mr. Lucas
 24 about supporting the concept.
 25 But that support was going to require certain specific

1 actions on the part of Dr. Beall and Mr. Lucas to comply with
 2 the obligations of the district to meet their -- their
 3 threshold for even proposing to expand. And that's what we
 4 were addressing in this letter.
 5 Q. Okay. What ultimately happened to the efforts to get a
 6 central wastewater collection system at Big Hill Acres?
 7 A. I don't know what ultimately happened. I know when I
 8 stepped out of this matter on October 19th of 2001, no progress
 9 had been made that I recall toward the expansion of this
 10 district to provide central wastewater and water
 11 infrastructure.
 12 Q. Just to elaborate on that a little bit, would it have
 13 required the approval of all of the residents at Big Hill Acres
 14 at that time in 2001 to get a central wastewater system
 15 installed at Big Hill Acres?
 16 A. As I recall, the protocols that the district was obligated
 17 to follow was a multipart test, at least two pieces. One was
 18 getting the owners of property which exceeded, I think, 160
 19 acres in size to support the concept. But then in addition to
 20 that, there was a requirement to obtain the support by
 21 signature of a certain number of individual property owners.
 22 And there was a setback provision of where they lived with
 23 respect to certain thoroughfares. And so Jackson County was
 24 attempting to meet that initial requirement by getting
 25 signatures of support from property owners.

1 Q. And was Jackson County providing this service for free or
2 would there be an assessment levied against the property owners
3 for the privilege of having a central wastewater system
4 installed at Big Hill Acres?

5 A. Well, the Jackson County Utility District -- West Jackson
6 County Utility District is just that, it is a utility. The
7 utility capitalizes the installation of its infrastructure,
8 water and wastewater. And then those who become participants
9 in those services will ultimately be assessed user fees,
10 probably monthly user fees. There would possibly be an
11 additional ad valorem tax associated with the expansion of the
12 district. So yes, there would be additional costs associated
13 with the use of such a system if it were ever expanded to cover
14 this area.

15 Q. And that would include a cost to the property owners at
16 Big Hill Acres?

17 A. Yes. Because the discussion was expanding in the
18 direction of Big Hill Acres to encompass the entirety of that
19 emerging development.

20 Q. Okay. Let me ask you a few questions about septic system
21 repairs, Mr. Palmer. Did you have discussions with the
22 Mississippi Department of Health regarding repairs to
23 malfunctioning septic systems at Big Hill Acres?

24 A. We did.

25 Q. Let me show you what's been marked as Defendants' Exhibit

1 of Health about that issue?

2 A. Well, the Mississippi Department of Health is the agency
3 of state government that is responsible for the administration
4 and enforcement of a body of state law called the Mississippi
5 individual on site wastewater disposal.

6 Q. System?

7 A. Law. And system may be in there somewhere.

8 Q. All right. And why were you asking Mr. Boggan for help?

9 A. Well, for two reasons. One, they are the cognizant state
10 agency that has oversight over these individual systems of
11 various kinds. After the Department of Environmental Quality
12 takes the first step that the law requires in what's called a
13 feasibility study to determine whether or not these individual
14 systems are even going to be allowed. And then the health
15 department takes over to oversee not only the types and kinds
16 of systems that are approvable, but also to certify certain
17 individuals who propose to engage in the business of installing
18 and removing these kinds of systems.

19 Q. Was there a concern at that time over the installers of
20 the systems at Big Hill Acres taking steps to repair the
21 systems?

22 A. There was concern about one. And it was reported to
23 Mr. Lucas, who in turn reported it to Mr. Crawford and me. The
24 individual that had installed, I think, most of the systems
25 throughout these parcels became very concerned from rumors he

1 844.

2 MR. WITTMAN: With Ms. Harris' consent, Your Honor, I
3 will mark this exhibit Government Exhibit 136, and I will
4 withdraw Defendants' Exhibit 844 and use the government
5 exhibit, if that's okay.

6 THE COURT: Very well.

7 BY MR. WITTMAN:

8 Q. This is in evidence already, Mr. Palmer, so you don't need
9 to identify it. Did you have reports of malfunctioning septic
10 systems at Big Hill Acres in March of 2001?

11 A. We did. And as I testified earlier, even earlier than
12 that.

13 Q. Okay. And in the first page of your letter, you talk
14 about approximately a dozen residences that are experiencing
15 problems?

16 A. Yes. And this letter is my record of the telephone
17 conversation I had already had with Mr. Boggan. And I then
18 wrote him to memorialize the conversation we had and to put in
19 writing the concerns that we had and the approach that we
20 wanted to take.

21 Q. Your letter indicates that you had called him once on
22 Friday, February 2nd, and again on Monday, February 19th. Did
23 you ever talk to him?

24 A. Yes.

25 Q. Okay. And why were you writing the Mississippi Department

1 had heard that his certification would be in jeopardy if he
2 attempted to effect any repairs.

3 Q. Okay. Would you turn to page 2 of the letter, please,
4 sir? And if you would, take a look at the portion that I've
5 highlighted there. Does that paragraph explain what the
6 concerns were on Mr. Shields' part?

7 A. Yes.

8 Q. He was concerned, as this indicates, that some adverse
9 action might be taken against him by the Department of Health?

10 A. Well, he was. And this is the individual, like I just
11 said, from what we learned from Dr. Beall and Mr. Lucas, who
12 had installed most of these systems and would be most
13 knowledgeable about how they were installed and would be the
14 first person logically to go to to seek help in repairing these
15 problems, whatever they were. But he was not comfortable at
16 all undertaking repairs for fear that his certification might
17 be, as I said, placed in jeopardy.

18 Q. If you would, turn to page 3. Does that describe what
19 your proposal was to the Department of Health with respect to
20 taking care of problems that had been reported with respect to
21 malfunctioning septic systems?

22 A. Yes.

23 Q. And it goes on -- so if I can show the whole paragraph.
24 Does that whole paragraph reflect your proposals to what would
25 be done with respect to repair of septic systems that were

1 reported to be malfunctioning at Big Hill Acres?
 2 Yes. This is our proposal to the Department of Health.
 3 And you say there if the health department declines to
 4 participate in finding a solution, Mr. Shields will then
 5 proceed as in his judgment conditions warrant; is that correct?
 6 A. Well, that's what we proposed. Because as I said maybe
 7 several times earlier in this letter and I testified earlier
 8 today, Dr. Beall and Mr. Lucas expressed to us their concern
 9 that problems be addressed, problems be fixed, period.
 10 Q. Did you receive a response to this letter from Mr. Boggan?
 11 A. I did.
 12 Q. Let me show you what I've marked for identification as
 13 Defendants' Exhibit 845, and let me give you a copy of it so
 14 you'll have it before you. Is that a copy of your response?
 15 A. Yes.
 16 MR. WITTMAN: This is also a government exhibit, Your
 17 Honor. It's Government Exhibit 137, I'm told. So I'm gonna
 18 use that number rather than adding another document to the
 19 record.
 20 BY MR. WITTMAN:
 21 Q. So you now have in front of you what used to be Defense
 22 Exhibit 845 and is now Government Exhibit 137. And I'd like to
 23 ask you a few questions about it. First of all, the
 24 highlighted portions I've got in Paragraph 2, Mr. Boggan tells
 25 you that every effort should be made to repair these systems;

1 correct?
 2 A. He did, which we very much appreciated his recognition of
 3 our common goal to deal with the problems.
 4 Q. And he tells you that the staff of the Department of
 5 Health is available to make recommendations, does he not?
 6 A. He did.
 7 Q. And that these repairs should be done in accordance with
 8 applicable regulations when possible; correct?
 9 A. Yes.
 10 Q. And if you do that, he says the Department of Health will
 11 take no action against a licensed installer attempting to make
 12 those repairs?
 13 A. That's what the letter recites.
 14 Q. All right. And then he goes on in the last paragraph to
 15 restate that proposition, does he not?
 16 A. He does.
 17 Q. And he restates several points. His assistance is going
 18 to be making inspections or offering recommendations; isn't
 19 that right?
 20 A. Yes.
 21 Q. And he says they will not undertake an enforcement action
 22 against a licensed installer -- that would be Mr. Shields, for
 23 example -- attempting to make such repairs?
 24 A. That's what the letter says.
 25 Q. And who got copies of this letter?

1 A. The letter itself as addressed to me is not addressed to
 2 anyone else. And below Mr. Boggan's signature, there's no
 3 indication that copies were sent to any party. What we did, of
 4 course, immediately was forward the letter again, according to
 5 firm policy, to Dr. Beall and Mr. Lucas.
 6 Q. That letter is dated March 5th; correct?
 7 A. Yes.
 8 Q. And there's no copy shown to anyone?
 9 A. No.
 10 Q. Now, let me show you what's been marked as Defendants'
 11 Exhibit 843, which is a letter dated March 6th, 2001, from
 12 Mr. Schwartz of the EPA to Mr. Riley of the Mississippi
 13 Department of Environmental Quality. Do you see that?
 14 A. I do.
 15 MR. WITTMAN: Your Honor, I offer into evidence
 16 Exhibit 843.
 17 MS. HARRIS: I believe it might be Government's 138.
 18 MR. WITTMAN: Okay. If that's correct, I will accept
 19 that, Your Honor, and withdraw 843.
 20 BY MR. WITTMAN:
 21 Q. And looking at Government Exhibit 138, in the first
 22 paragraph, it reflects, does it not, that the EPA requested
 23 Mr. Lucas coordinate with the Department of Health to implement
 24 temporary fixes for these problems; correct?
 25 A. Yes.

1 Q. And it goes on to say in the second paragraph that the EPA
 2 doesn't intend to take any action if the activities recommended
 3 to address failing septic systems arguably involve some
 4 discharge regulated under Section 404 of the Clean Water Act?
 5 A. That's what it says. And this letter, like the letter I
 6 wrote to Mr. Boggan, Mr. Wittman, came after, as I recall, a
 7 personal conversation I also had with Mr. Schwartz about the
 8 matter.
 9 Q. And you did show -- Mr. Schwartz did send you a copy of
 10 his letter, did he not?
 11 A. He did. It's shown on the letter itself.
 12 Q. Okay. And a copy also went to the Department of Health,
 13 Ms. Simpson?
 14 A. That's correct.
 15 Q. And to Mr. Palmer Hough?
 16 A. That's correct.
 17 Q. Now, to your knowledge, did the Mississippi Department of
 18 Health ever make any inspections or offer any recommendations
 19 for the repair of failing septic systems at Big Hill Acres?
 20 A. I don't know. We were not involved as counsel in any
 21 subsequent matters involving failing systems or discussions
 22 with regulators or attempts to repair systems.
 23 Q. But the EPA had requested Mr. Lucas to make temporary
 24 repairs to those systems, had it not?
 25 A. Well, that's what Mr. Schwartz's letter said.

1 Q. All right. And what was your understanding, Mr. Palmer,
2 of the effect of this exchange of letters between the
3 Mississippi Department of Health and the Environmental
4 Protection Agency with respect to making repairs to failing
5 systems at Big Hill Acres?

6 A. Well, the good news, which, again, we very much
7 appreciated, is that senior regulators were agreeing with us
8 that the main focus of our collective concern should be people
9 who have problems and to help them get some relief from
10 whatever problems they were experiencing in their dwellings.
11 And that was a major step forward for us in dealing with one of
12 the sources of substantial unrest and tension in the community.

13 Q. Did you advise Mr. Lucas and Dr. Beall of this
14 correspondence between the EPA and the Department of Health?

15 A. Oh, I did. And again, to repeat myself, we forwarded
16 these letters on to Dr. Beall and Mr. Lucas with the
17 admonition, Mr. Wittman, as explained, I believe, in one of my
18 letters that neither Mr. Lucas nor Dr. Beall should personally
19 engage in repairs. They were not certified by the Department
20 of Health to conduct those activities. And we admonished them
21 to rely upon those like Mr. Shields who were properly certified
22 to do that kind of work.

23 Q. All right. Let me show you what's been marked for
24 identification as Defendants' Exhibit 833?

25 MS. HARRIS: Your Honor, that one's not in evidence.

1 if government counsel has had a chance to check that CD-ROM.

2 MS. HARRIS: I haven't even seen a CD-ROM. I'm
3 sorry.

4 THE COURT: Are you familiar with it, Mr. Korzenik?

5 MR. KORZENIK: I'm not, but that doesn't mean that --
6 let me check. I'm not familiar with it.

7 MS. HARRIS: I thought one was promised and never
8 delivered. But we have to check with Josh.

9 MR. WITTMAN: This is the last case I'm ever gonna
10 deal with CD-ROMs being exchanged.

11 MS. HARRIS: That's a good idea.

12 MR. WITTMAN: Because you can't tell what was
13 exchanged and what was not exchanged without opening up a
14 CD-ROM in the middle of a trial.

15 THE COURT: It's a good idea to make kind of an index
16 with regard to what's contained on it.

17 MR. WITTMAN: Yes. We should have done that.

18 THE COURT: I'm inclined, while Mr. Korzenik is
19 researching this, to accept the representations of counsel as
20 an officer of the court.

21 MR. KORZENIK: The keeper of the records has said
22 that we got a CD of photographs. We didn't get a CD of
23 documents.

24 MS. HARRIS: That's what I thought.

25 THE COURT: All right. I'm going to be consistent,

1 MR. WITTMAN: May I just have the screen without the
2 jury, Your Honor?

3 BY MR. WITTMAN:

4 Q. Okay. Do you recognize this as a letter you sent on March
5 9th, 2001, to Mr. Lucas and Dr. Beall?

6 A. Yes.

7 Q. Okay.

8 MR. DEAN HOLLEMAN: It's still on.

9 MR. WITTMAN: The jury is still on?

10 THE COURT: I beg your pardon. You can go ahead.
11 I'm sorry.

12 Q. Okay. Do you recognize your signature there?

13 A. I do.

14 MR. WITTMAN: All right. Your Honor, I offer into
15 evidence Defendants' Exhibit 833.

16 MS. HARRIS: Your Honor, this is one we addressed
17 earlier, and you sustained my objection.

18 MR. WITTMAN: May we approach on that, Your Honor?

19 THE COURT: You may.

20 (Bench conference on the record with all counsel;
21 defendants not present, as follows:)

22 MR. WITTMAN: I understand -- during the noon hour, I
23 checked this out. I understand there was a CD-ROM that was
24 furnished to the government which had these exhibits on it.
25 And that they have indeed been furnished. I'm just wondering

1 if nothing else. If it wasn't provided during discovery, it's
2 excluded. But the witness can testify to what he did and what
3 he said.

4 MR. WITTMAN: Okay. I'll do that. Thank you, Your
5 Honor.

6 (Bench conference concluded)

7 BY MR. WITTMAN:

8 Q. Let me ask you this, Mr. Palmer. Did you regard this
9 exchange of correspondence between the EPA and the Mississippi
10 Department of Health to be major progress?

11 A. Yes, sir. I thought that's what I just said.

12 Q. Did anyone from the Environmental Protection Agency ever
13 tell you that Mr. Lucas or the companies were required to
14 obtain a Clean Water Act Section 402 permit, also referred to
15 as an NPDES permit, for the septic tanks installed at Big Hill
16 Acres before they could be repaired?

17 A. No.

18 Q. Did anyone from the Mississippi Department of
19 Environmental Quality ever tell you that?

20 A. No.

21 Q. And under Mississippi law, is the owner of a septic system
22 required to get a permit for effluent discharge on his own
23 property?

24 A. No.

25 Q. Okay. Did you ever advise Mr. Lucas that he needed to

1 apply for a Section 402 NPDES permit for any of the septic
 2 tanks installed in wetlands at Big Hill Acres?
 3 A. No. Not as long as they conformed to the provisions of
 4 the Mississippi on site wastewater disposal law.
 5 Q. And to your knowledge, did Mr. Lucas and Dr. Beall attempt
 6 to comply with that law by hiring a licensed professional
 7 engineer and a licensed installer to install those septic
 8 systems?
 9 A. Yes.
 10 Q. Okay. Now, in April of 2001, did you finally complete the
 11 mapping of the parcels of land at Big Hill Acres that you were
 12 trying to get released for sale at Big Hill Acres and send them
 13 on to the EPA?
 14 A. The date, I can't be precise about. But that sounds about
 15 right, in the Spring of 2001.
 16 Q. Let me show you an exhibit that I've marked as Defendants'
 17 Exhibit 834, a letter dated April 18th, 2001, to Mr. Schwartz,
 18 who had replaced Ms. Cox, as I understand it; correct?
 19 A. That is correct.
 20 Q. All right. And do you recognize this as a copy of a
 21 letter you sent to Mr. Schwartz on or about April 18th of 2001?
 22 A. Yes.
 23 MR. WITTMAN: Your Honor, I offer into evidence
 24 Defendants' Exhibit 834.
 25 MS. HARRIS: No objection.

1 Q. And if you would, please, refer to page 3. And I've got
 2 just one question there with respect to the relief you were
 3 requesting. I'll direct you just to the last paragraph on that
 4 page. Again, you take issue with the EPA, do you not,
 5 regarding their position as to the Category 3 lots being
 6 unreasonable?
 7 A. We do.
 8 Q. I don't want you to repeat it. That's for the reasons you
 9 mentioned, I think, even before lunch and briefly after lunch;
 10 correct?
 11 A. Yes.
 12 Q. Now, did all of the lots -- I'm sorry. Did some of the
 13 lots at Big Hill Acres contain very small amounts of property
 14 that was arguably considered to be wetlands?
 15 A. Well, they did. And we refer to that either in this
 16 letter or another one that you've shown me. The work that
 17 Dr. Sanders had basically completed at that point reflected
 18 that in a number of cases -- and I don't remember how many --
 19 the line which depicted some degree of impact, again, according
 20 to the categories that EPA specified, the lines showed
 21 extremely small areas, areas that I believe we referred to in
 22 one of these letters -- maybe this one -- as areas that would
 23 be measured in square feet, not in acres.
 24 And so we took the position that for lots with extremely
 25 small delineated impact areas, that we should be allowed to

1 THE COURT: Without objection, it will be marked and
 2 admitted.
 3 (Exhibit D-834 marked and received in evidence)
 4 BY MR. WITTMAN:
 5 Q. Now, if you would, please, turn to page 2 of that letter.
 6 And I'll ask you: Was Big Hill Acres experiencing any
 7 financial problems as a result of the EPA's cease and desist
 8 order that had been issued back in July of 2000?
 9 A. They were.
 10 Q. And tell the jury, if you would, briefly, what the nature
 11 of those problems were.
 12 A. As Dr. Beall and Mr. Lucas kept us apprised of their
 13 financial status, they focused on their income as well as their
 14 other obligations, which included expenses -- maintenance
 15 expenses, operational expenses -- across these two
 16 developments. It included certainly their professional and
 17 legal fees. It included obligations to lenders from whom they
 18 had borrowed substantial sums of money, not only as to
 19 repayment of interest. But as I recall, at some point a
 20 requirement to begin to repay some principal.
 21 So we asked them to simply prepare for us -- as simple as
 22 could be, put together a cash flow matrix showing monthly
 23 obligations and monthly receipts. So that would give us a
 24 better picture of their -- of their fiscal situation. And they
 25 did that.

1 proceed with them essentially as Category 2 lots and to move
 2 forward.
 3 Q. Okay. Let me ask you to turn to page 4. And you
 4 basically made the proposal that the EPA release all of the
 5 remaining lots and other parcels and inventory that could be
 6 marketed for sale now; is that correct?
 7 A. We did. And as I mentioned earlier, Mr. Wittman, we got
 8 to a point, in an effort to bring to closure all of this work,
 9 of proposing that even though we reserved our prerogative to
 10 argue about who did what where and what impacts were
 11 attributable to what activities, that we were asking Mike Goff
 12 and Bill Tomlinson to simply prepare a plan for EPA to consider
 13 that did not differentiate among any of that, but simply took
 14 into account all of Dr. Sanders' work and then prepare a work
 15 out accordingly.
 16 Essentially, we proposed to mitigate and/or restore
 17 everything regardless of who might have originally caused the
 18 problem. And that's why we were struggling to understand EPA's
 19 unwillingness to release the Category 3 lots when we were
 20 proposing to mitigate for everything.
 21 Q. Okay. And did you include with your letter to
 22 Mr. Schwartz a series of color coded maps to give what you
 23 describe as the big picture of the situation we are dealing
 24 with?
 25 A. We did.

1 Q. I'm gonna ask if you can identify for us these four
 2 maps -- and I have mounted on a board for ease of presenting
 3 them to the jury -- as the maps that accompanied your letter.
 4 A. They appear to be. Certainly from looking at that first
 5 one, it has the features that are described in this letter.
 6 And if I were to see all the others -- there should have been
 7 one each for Dr. Sanders' plats -- then yes, that would be the
 8 set that we sent with this letter to Mr. Schwartz.
 9 Q. Look familiar?
 10 A. Yes.
 11 Q. Okay. And again, all five have the various multicolors
 12 that are described --
 13 A. Yes.
 14 Q. -- in your letter?
 15 A. Right. That one also.
 16 Q. And finally?
 17 A. And that's the fifth one.
 18 MR. WITTMAN: Your Honor, we'd offer these maps in
 19 evidence as part of Defendants' 834.
 20 MS. HARRIS: No objection.
 21 THE COURT: Let me ask you this: Defendants 834,
 22 that's collectively all five maps?
 23 MR. WITTMAN: Yes. And the letter that accompanied
 24 them. I can mark the map separately if you would prefer.
 25 THE COURT: I was going to ask you if you had the

1 testimony. I would ask that you please try to use this
 2 microphone so the jury and the court reporter can hear you.
 3 THE WITNESS: Yes, Your Honor.
 4 THE COURT: Counsel for government may move anywhere
 5 in the courtroom that they can see these maps, if you would
 6 like to.
 7 MR. WITTMAN: It would help if you turn these things
 8 the right way, doesn't it? I'm running out of easels. We can
 9 go from there. Can you step over here, please, Mr. Palmer?
 10 And step to the mike -- well, I'll get the microphone so you
 11 can use it.
 12 BY MR. WITTMAN:
 13 Q. I've tried to set these up, Mr. Palmer, running from left
 14 to right to reflect the property as it appears as you move from
 15 east to west across the north property line?
 16 A. Yes, sir.
 17 Q. And referring first to the board on the left-hand side,
 18 can you tell us what that depicts and what those colors stand
 19 for?
 20 A. If you will allow me, Mr. Wittman, since it's been almost
 21 four years since I have pored over these documents and
 22 certainly these plates to refer to the letter that's already
 23 been admitted into evidence.
 24 Q. Please do.
 25 A. To explain what the color codes were intended to do and

1 maps in a smaller version that could be included in the record.
 2 MR. WITTMAN: I can get a copy. I couldn't show them
 3 to the jury, though, without mounting them. So that's why I
 4 did it this way.
 5 THE COURT: Does the government have any objection to
 6 allowing Mr. Wittman the opportunity to get some smaller
 7 versions of what the jury will see to include in the record?
 8 MS. HARRIS: No, Your Honor.
 9 MR. WITTMAN: Actually, Your Honor, it will be the
 10 same version. We just numbered these on a board. The maps
 11 themselves are right there. I mounted them here simply for
 12 ease of presentation.
 13 THE COURT: If you will get me something that's, for
 14 lack of a better term, foldable and filable.
 15 MR. WITTMAN: We can do that, Your Honor.
 16 THE COURT: Without objection then, Defendants'
 17 Exhibit 834, which is the letter and the accompanying maps,
 18 will be marked and admitted.
 19 (Exhibit D-834 marked and received in evidence)
 20 MR. WITTMAN: Your Honor, it's difficult to question
 21 the witness there about these. Can I set these up on an easel
 22 and have the witness leave the witness box to come explain all
 23 this?
 24 THE COURT: Yes. Please set up the microphone.
 25 Mr. Palmer, sir, you may step down during this portion of your

1 did do when we had these maps prepared, as you see on page 4 of
 2 the letter, the lots that have been either sold or are
 3 available for sale are shaded pink. And you've got three of
 4 those others that -- I don't know that the jury can see if you
 5 put those other two down there.
 6 But the areas that were shaded pink are lots that had
 7 already been sold or were available for sale. The roads are
 8 colored blue and orange. The roads that were constructed in
 9 whole or in part by Jackson County, we shaded blue. The roads
 10 that were constructed by Dr. Beall and Mr. Lucas using their
 11 forces or their contractors are shaded in orange.
 12 The lots that are shaded in yellow are the ones that we
 13 were asking at that point to have released for sale. And I
 14 made note here about those yellow lots, that there are some
 15 that are not shaded because they were intended to allow access.
 16 This one I spot right here, which is not shaded. And beyond
 17 that, the areas that are shaded green are the areas that at
 18 that point in time Mr. Goff and Mr. Tomlinson were already
 19 recommending be considered for set aside as part of their
 20 emerging mitigation plan for EPA. So that is the -- that
 21 explains the multicolor maps that you see.
 22 Q. And does this exhibit reflect graphically, if you will,
 23 what you and I have been talking about for the past couple
 24 hours during your examination with respect to lots that have
 25 been sold, lots you were proposing to sell and lots that were

1 gonna be used possibly to mitigate -- serve as mitigation in
 2 your discussions with the Environmental Protection Agency?
 3 A. Yes. That was the intent behind preparing these maps and
 4 submitting them to EPA.
 5 Q. Okay. And just so we're clear, actually this map should
 6 really look something like this in terms of it's a land along
 7 Jim Ramsey Road; is that correct?
 8 A. That's correct. It's a county road that runs east to
 9 west. Across this extent of the property is the blue line.
 10 And the way these have been mounted, they just don't match up
 11 exactly. There are a couple of things to note, though. This
 12 is an overlap area. That's why it's not shaded. That's just
 13 the way Dr. Sanders wound up having his maps prepared.
 14 And there is one area over here that is left uncolored at
 15 all. And I think we may have mentioned that somewhere in this
 16 letter. And it was one of the areas where there was
 17 substantial sediment deposition in those heavy rains that
 18 washed material from this ridge into this swale. And we left
 19 it uncovered because that was one of the areas that EPA had
 20 already begun to talk about as a restoration area rather than
 21 using that as a mitigation area.
 22 Q. And we've heard some testimony about Consolidated
 23 Investments owning some property as well. Does this map
 24 reflect, if I can put it over here, the acreage that was owned
 25 by Consolidated Investments as well?

1 A. Well, it's very tedious work, Mr. Wittman. It's the kind
 2 of work, honestly, that I as a professional engineer would
 3 enjoy doing. But it's very expensive when lawyers are doing
 4 it. But it simply had to be done, in our opinion, to continue
 5 to give the government a very accurate pictorial representation
 6 of what would have been extremely difficult to work with if we
 7 just, as I've said many times, had worked with stacks of paper.
 8 Q. Did you continue to represent Mr. Lucas and Dr. Beall
 9 throughout the spring and the summer of 2001?
 10 A. I did. Our firm -- well, as I mentioned, my involvement
 11 in the matter ended on the 18th of October, as I recall. So I
 12 was involved with Mr. Crawford throughout the spring, summer
 13 and early fall of 2001.
 14 Q. And let me show you what's been marked
 15 MR. WITTMAN: Can I show this just to the witness,
 16 Your Honor?
 17 BY MR. WITTMAN:
 18 Q. Let me show you what I've marked as Defendants' Exhibit
 19 835 for identification. Do you recognize that as a letter that
 20 you sent to Mr. Schwartz -- that you received from
 21 Mr. Schwartz, I should say --
 22 A. Yes.
 23 Q. -- on May 3rd, 2001?
 24 A. Yes.
 25 Q. Okay. And Mr. Schwartz tells you that he agrees to a

1 A. We're gonna have to dance a little bit, Mr. Wittman, here.
 2 Q. I'm sorry.
 3 A. Yes, it does. As I recall, the property that Consolidated
 4 Investments acquired is the easternmost tract, which is bounded
 5 on the north by Jim Ramsey Road. And it is depicted on this
 6 map essentially in Section 11, as I recall.
 7 Q. And then, finally, this last section, is that a section
 8 that adjoins the property on the south over here?
 9 A. It does, Mr. Wittman. But I want to believe it's somewhat
 10 more to the east of where you are. Somewhat more down in here.
 11 Because that's Section 15, as I recall. And it would -- it
 12 would fall where these -- where the -- there's some roads that
 13 would have to match up, but that's where that would go. It
 14 would not be on the end over there.
 15 Q. That depicts the entirety of the entire 2,600 acres
 16 approximately?
 17 A. Yes, sir.
 18 Q. Okay. I think you can resume your seat, now. And thank
 19 you very much. Mr. Palmer, did it take a lot of effort and
 20 time to compile all these maps and to do the kind of work you
 21 were doing at Big Hill Acres in April of 2001?
 22 A. I'm sorry. As I was sitting down, I was distracted.
 23 Would you repeat your question?
 24 Q. What kind of time and effort did it take to put all this
 25 together and present it to the government?

1 meeting and thinks it's a good idea?
 2 A. Yes.
 3 Q. Did you, in fact, go to Atlanta in July of 2001 to meet
 4 with Mr. Schwartz?
 5 A. I did. As I recall, we struggled with calendars and wound
 6 up having July 3rd as the only date that we could all be there.
 7 Mr. Goff, Mr. Tomlinson and I met with Mr. McDermott,
 8 Ms. Tonglao and several -- Mr. Schwartz. And as I recall,
 9 Mr. Hough was there. And I believe Mr. Wylie was there.
 10 MR. WITTMAN: Again, Your Honor, if I may have the
 11 screen just for the witness.
 12 BY MR. WITTMAN:
 13 Q. Let me show you a copy of a letter dated July 6th, 2001,
 14 addressed to you from Mr. Schwartz. Do you recognize that
 15 letter as a copy of a letter sent to you on or about July 6th,
 16 2001?
 17 A. I recognize the part of it that I see.
 18 Q. Okay. Let me turn to the second page. Do you recognize
 19 Mr. Schwartz' signature?
 20 A. Yes.
 21 MR. WITTMAN: Your Honor, offer into evidence
 22 Defendants' Exhibit 836.
 23 THE COURT: Any objection?
 24 MS. HARRIS: No objection.
 25 THE COURT: Without objection, it will be marked and

1 admitted.

2 (Exhibit D-536 marked and received in evidence)

3 BY MR. WITTMAN:

4 Q. Had virtually all of the lots at Big Hill Acres been sold
5 prior to the issuance of the EPA's administrative cease and
6 desist order in August of 2000?

7 A. Well, I don't know that I can say virtually all because I
8 don't know what that means. I know that, having been in
9 business for some five years by that time in 1999 and then by
10 the time the two C and Ds were issued in '99, a number of lots
11 had been sold. I don't know exactly how many.

12 Q. As we just saw on the maps we showed the jury a moment ago
13 that accompanied your letter of April 2001, the lots all shaded
14 in pink had been sold; correct?

15 A. Yes.

16 Q. Okay. I just want to refer briefly to your letter -- the
17 letter of July 6th, 2001, from Mr. Schwartz to you. And I just
18 have a couple questions about it. He tells you in the second
19 paragraph of the letter, does he not, that many aspects of the
20 plan prepared by Wildlife Technical Services were satisfactory;
21 correct?

22 A. Yes.

23 Q. And he goes on to deal with other areas that he wanted to
24 comment on; correct?

25 A. He did. The main goal of this meeting for us and, I

1 believe, for EPA as well was to have our first conversation
2 about the work out plan that Mr. Goff and Mr. Tomlinson had
3 progressed substantially on. Now, we had been told in that
4 letter that you just showed me from Mr. Schwartz that they
5 wanted a copy of the document that Mr. Goff and Mr. Tomlinson
6 would be talking from at least three days before the meeting.
7 And that was done, as I recall.

8 So the main goal of the meeting was to really begin to get
9 the wetlands scientists from EPA and the wetlands consultants
10 that had been retained by Mr. Lucas and Dr. Beall fully engaged
11 on the intricacies of the plan that Mr. Goff and Mr. Tomlinson
12 were proposing.

13 Q. Okay. I asked you a moment ago if you were familiar with
14 the amount of property that had been sold by Big Hill Acres by
15 August of 2000. And we referred to the maps and so forth. I
16 want to refer you to another exhibit in evidence as Government
17 Exhibit 123(a). And that's a summary of the lots sold at Big
18 Hill Acres that was introduced during the government's case.
19 That reflects, does it not, that the total sold by August 2000
20 was 670 lots?

21 A. That's what this table shows.

22 Q. Okay. And that's the point in time at which the EPA
23 issued its administrative C and D restricting the sale of all
24 future lots?

25 A. Yes, sir.

1 Q. Okay. But there were this -- indeed notwithstanding what
2 that exhibit showed you, there were some lots that had not been
3 sold you were seeking a release for; correct?

4 A. That's correct.

5 Q. And you got some of those lots released as time went on,
6 did you not?

7 A. Yes, we did.

8 Q. Now, did there come a time in the Fall of 2001,
9 Mr. Palmer, when you were, I guess, requested to join the EPA
10 and serve as its regional director?

11 A. Yes, sir.

12 Q. And when did that occur?

13 A. I received word, as best I recall, on the afternoon of
14 October 19th. I was on a trip in South Mississippi and got a
15 call, not directly from the EPA White House liaison, but
16 indirectly. He was not able to catch me, but the deputy
17 regional administrator called to tell me that they had gotten
18 word that my appointment had been announced.

19 Q. And when you learned that, what, if anything, did you do
20 with respect to your representation of Big Hill Acres?

21 A. The very next day, I completely disengaged from all
22 matters in which I was involved in the firm involving EPA, the
23 Mississippi Department of Environmental Quality, the
24 Mississippi Department of Health and two other agencies which
25 administer and enforce certain EPA delegated programs in

1 Mississippi. One is the Mississippi Oil and Gas Board. The
2 other is the Mississippi Department of Agriculture and
3 Commerce. I had to immediately disengage from all activity
4 involving all those agencies and any other activity that might
5 in any way present a potential conflict of interest for me or
6 them.

7 Q. Were you able to give any further advice to Mr. Lucas or
8 Big Hill Acres after the announcement of your appointment --

9 A. No, sir.

10 Q. -- to EPA? And did you, in fact, not give any advice to
11 them after that time?

12 A. That is correct.

13 MR. WITTMAN: Your Honor, if I could have just one
14 moment.

15 (Off the record discussion between defense counsel)

16 MR. WITTMAN: Thank you, Mr. Palmer. Your Honor, I
17 tender the witness.

18 THE COURT: Cross-examination?

19 CROSS-EXAMINATION

20 BY MS. HARRIS:

21 Q. Good afternoon, Mr. Palmer.

22 A. Good afternoon.

23 Q. Now, you began representing Mr. Lucas and you said
24 Mr. Beall, Big Hill Acres and Consolidated Investments in April
25 of 2000?

1 A. That is correct.
 2 Q. And you've mentioned several times that you did this along
 3 with your partner, John Crawford?
 4 A. That is correct.
 5 Q. And after your representation ended, Mr. Crawford's
 6 continued?
 7 A. That's my understanding.
 8 Q. Okay. And it continued for at least a year, didn't it?
 9 A. I don't know how long, but I understood that the firm did
 10 maintain an open file. Mr. Crawford would have succeeded me as
 11 the file manager. That's why all of the correspondence was
 12 over my signature. The firm assigns a file manager to each
 13 case. And I had been the file manager. And Mr. Crawford
 14 stepped in to take the file, although he had been working with
 15 me from the beginning.
 16 Q. Okay. So Mr. Crawford's involvement with Mr. Lucas was
 17 more extensive than yours?
 18 A. Well, to the extent that there was involvement after I
 19 withdrew, yes.
 20 Q. Okay. And Mr. Crawford's not in the awkward position of
 21 leading the agency enforcing this criminal action against his
 22 former client, is he?
 23 A. Excuse me. Say that again.
 24 Q. I said Mr. Crawford is not in the awkward position of
 25 leading the agency, EPA, which is enforcing this criminal

1 action against his former client, is he?
 2 MR. WITTMAN: Objection, Your Honor. Argumentative.
 3 THE COURT: Objection sustained.
 4 BY MS. HARRIS:
 5 Q. In any event, you're testifying here today, not
 6 Mr. Crawford; correct?
 7 A. That's correct.
 8 Q. And do you think that your current position as regional
 9 administrator of EPA has anything to do with that?
 10 A. Well, I was the one that was subpoenaed. And my name is
 11 on all of the letters.
 12 Q. By the time you got involved in this matter in April of
 13 2000, several things had happened; right, already?
 14 A. Yes.
 15 Q. You mentioned one of those being the United States Army
 16 Corps of Engineers had issued a cease and desist order?
 17 A. Yes.
 18 Q. And that was -- and I'm directing your attention to
 19 Government Exhibit 129. That was a very broad order, wasn't
 20 it?
 21 A. It was.
 22 Q. In fact, it directed that your clients basically stop
 23 constructing their subdivision?
 24 A. Well, the mandates are clear. I won't interpret them
 25 beyond what they say. There are two things about the order, of

1 course. One, you are correct in that the mandates are broad.
 2 Interestingly, the reference to section numbers is less broad.
 3 But regardless, this was a broad -- broadly drawn cease and
 4 desist.
 5 Q. And Mr. Lucas, you learned, had responded in writing to
 6 that cease and desist order on June 15th, 1999. And I'm
 7 referring you to Government Exhibit 130.
 8 A. Mr. Lucas advised us that he had signed the letter that
 9 was addressed to the Corps of Engineers responding to that
 10 cease and desist, yes.
 11 Q. And in that letter, he assured the Corps that there would
 12 be no additional activities in wetlands, didn't he?
 13 A. That's what it says.
 14 Q. And he assured the Corps that there would be no additional
 15 sales of lots in wetlands without authorization?
 16 MR. WITTMAN: Objection, Your Honor. It misstates
 17 the letter.
 18 THE COURT: The letter is in evidence. The jury can
 19 determine what it says.
 20 BY MS. HARRIS:
 21 Q. And as you pointed out, the United States Environmental
 22 Protection Agency had also issued what you call a cease and
 23 desist?
 24 A. Yes.
 25 Q. That, too -- and I'm referring to Government Exhibit 131,

1 which was issued on August 4th, 1999 -- was a very broad order?
 2 A. It was. I can't read it, but I know it was.
 3 Q. Okay. Let me see if I can make it a little closer. Broad
 4 in the sense that it ordered that Mr. Lucas cease participating
 5 in or causing discharges in wetlands?
 6 A. Yes.
 7 Q. And cease all work in wetlands?
 8 MR. WITTMAN: Your Honor, I'm gonna object to her
 9 characterization of --
 10 THE REPORTER: Her characterization of what?
 11 MR. WITTMAN: I'm gonna object to her
 12 characterization of the order. The document speaks for itself,
 13 and she's mischaracterizing what the order says.
 14 THE COURT: Again, that order is before the jury.
 15 The jury can determine what it says.
 16 BY MS. HARRIS:
 17 Q. And you learned in April of 2000 that your client had also
 18 responded to the Environmental Protection Agency in writing?
 19 A. Yes. Mr. Lucas provided a copy of this to us.
 20 Q. I'm showing you his response of August 8th, 1999, which is
 21 Government Exhibit 191.
 22 MR. WITTMAN: What is the exhibit you have on the
 23 screen, please, Ms. Harris?
 24 MS. HARRIS: 191.
 25 MR. WITTMAN: Thank you.

1 A. Yes. I see that date in the upper left-hand corner right
2 at the top of the screen.
3 Q. Right?
4 A. Yes. I do see that date.
5 Q. And Mr. Lucas states that he's complied with the order;
6 correct?
7 A. That's what it says.
8 Q. Okay. But as of the time that you began your
9 representation in April, you knew that Mr. Lucas had, in fact,
10 continued to develop Big Hill Acres, didn't you?
11 A. We knew that some lots had been sold. And that was not in
12 doubt. As to additional development activities in the sense of
13 roads and that sort of thing, we were told at the outset that
14 that had been completed.
15 Q. Told by Mr. Lucas?
16 A. Yes.
17 Q. You then learned that it was not just the Army Corps of
18 Engineers and the Environmental Protection Agency that
19 Mr. Lucas had been involved with; correct? That he had also
20 heard from the Department of Health -- the Mississippi State
21 Department of Health?
22 A. That is correct.
23 Q. And you knew that because Mr. Lucas gave you copies of
24 letters that he had received from the Department of Health?
25 A. That is correct.

1 Q. And these were copies of letters that were addressed from
2 the Department of Health to him -- to Robert Lucas?
3 A. I remember one addressed to him. And there was at least
4 one more or two more addressed to Mr. Thompson. But I believe
5 I remember one that was addressed to him.
6 Q. And do you remember that that one addressed to him advised
7 him of erroneous recommendations regarding wastewater treatment
8 systems?
9 A. I don't remember the content of the letter. If you can
10 show it to me, it may refresh my memory. But I don't remember
11 the substance of that or even when the letter was sent, what
12 year. I don't have any recollection of that right now, the
13 substance of it.
14 Q. Do you remember, as you stated, that at least one or more
15 letters from the Department of Health addressed to M.E.
16 Thompson were provided to you by Mr. Lucas?
17 A. Yes.
18 Q. And those were letters warning Mr. Thompson that he was
19 placing underground septic systems in saturated soils; correct?
20 MR. HOLDER: I object to that because I think the
21 letters speak for themselves. They're in evidence and have
22 been testified to before.
23 THE COURT: What is it you seek to test here,
24 Ms. Harris, through this witness if the letter is already in
25 evidence, whether he received them or not or knew about them?

1 MS. HARRIS: The letters are in evidence. But so far
2 before the jury, Mr. Lucas has claimed he hasn't seen the
3 letters that were sent to Mr. Thompson.
4 MR. WITTMAN: Mr. Lucas hasn't explained anything to
5 this jury.
6 MR. TIMOTHY HOLLEMAN: Your Honor, may we approach?
7 May we approach, Your Honor?
8 THE COURT: You may. Seems like a good time to get a
9 cup of coffee. I don't know about you. Thank you, ladies and
10 gentlemen of the jury. Why don't you go back to the jury room.
11 (Jury out at 2:47 p.m.)
12 MR. WITTMAN: Your Honor, may the witness step out?
13 THE COURT: Would you, Mr. Palmer?
14 THE WITNESS: Yes, sir. Thank you, Your Honor.
15 THE COURT: You can take a little break, too.
16 MR. TIMOTHY HOLLEMAN: Ready, Your Honor? Your
17 Honor, comes now the Defendant Robbie Lucas Wrigley and renews
18 her motion for a mistrial and adds as grounds for the motion
19 for mistrial Ms. Harris' comment in the presence of the jury
20 that Mr. Robert Lucas claimed. And she made a statement after
21 that about what Mr. Lucas was claiming. That's a comment for
22 the second time on the defendants' right to testify or against
23 his right not to testify and to remain silent. And we, again,
24 renew our motion for a mistrial. That's the second time the
25 Assistant U.S. Attorney has done that in this trial.

1 THE COURT: Anybody else?
2 MR. HOLDER: We join in the motion, Judge, if you
3 will allow me to join.
4 MR. WITTMAN: As do we, Your Honor, on behalf of
5 Mr. Lucas.
6 THE COURT: Does the government wish to respond?
7 MS. HARRIS: First of all, Your Honor, I was merely
8 responding to your question. And I think that it's clear to
9 the jury that the defense can make assertions through their
10 counsel. I was not commenting on anybody's failure to testify
11 or right to silence. I was commenting on what has been
12 presented in cross-examination of government witnesses.
13 THE COURT: Okay.
14 MS. HARRIS: I also believe that I was commenting on
15 something that's relevant to Mr. Palmer's advice to his client
16 given that these letters were provided by Mr. Lucas to him.
17 MR. HOLDER: The only thing I'd say in response to
18 that, Judge, I don't know that any claim has been made at all
19 that Mr. Lucas said he didn't get any notification --
20 THE REPORTER: That he didn't get any notification
21 what?
22 MR. HOLDER: That he didn't get any notification of
23 any letters that were sent to Mr. Thompson. I think there
24 might -- may be some that Thompson didn't get a letter from the
25 Department of Health, but I'm not aware of any claim by

1 Mr. Lucas that he didn't get any letters.
 2 THE COURT: All right. In all fairness to
 3 Ms. Harris, I really don't see how the comment that she made
 4 can be characterized as a comment on Mr. Lucas' testifying in
 5 this case one way or the other. Looking at the record
 6 itself -- and Ms. Harris was responding to a question by the
 7 Court. And my question was this, and I quote: What is it you
 8 seek to test here, Ms. Harris, through this witness if the
 9 letter is already in evidence, whether he received them or not
 10 or knew about them? And then Ms. Harris replies: The letters
 11 are in evidence. But so far before the jury, Mr. Lucas has
 12 claimed he hasn't seen the letters that were sent to
 13 Mr. Thompson.

14 I presume what Ms. Harris was responding to is comments
 15 made by counsel so far may tend to indicate Mr. Lucas had not
 16 seen these letters. I have great difficulty characterizing
 17 that as a direct and intentional comment on the part of the
 18 government on Mr. Lucas' failure to testify or whether he
 19 should testify in this case.

20 In an abundance of caution, however, I will instruct the
 21 jury, once again, that they're to disregard any such comments.
 22 I find that Ms. Harris' comments -- again, I have great
 23 difficulty characterizing them as a comment on Mr. Lucas'
 24 failure to testify. But even if so construed -- and that would
 25 be a stretch -- they were not intentional. And Ms. Harris'

1 comment was in response to my question.
 2 In the future, I think it would be prudent if the
 3 government would be circumspect before they make any mention
 4 about the defendants doing anything in response even to a
 5 question asked by the Court. My question was intended to
 6 determine whether you were just trying to get the witness to
 7 corroborate what's already in evidence or whether you were
 8 getting to the point, which is whether or not the contents of
 9 these letters were made known by this witness to his clients,
 10 which may go to the issue of knowledge. And if I misled you,
 11 Ms. Harris, for that I am truly deeply sorry.

12 MS. HARRIS: No, Your Honor. I apologize to the
 13 Court.

14 THE COURT: That's all right. I don't think
 15 there's -- quite frankly, I don't think there's any harm done.
 16 Motions for mistrial are denied.

17 Why don't we take a short break as well. And again, I
 18 will instruct the jury upon their return that -- if they even
 19 heard the comment, that they're to disregard it.

20 MR. WITTMAN: Thank you, Your Honor.

21 THE COURT: We'll be in recess.
 22 (Recess at 2:55 p.m., until 3:08 p.m.)

23 THE COURT: Are we ready to proceed?

24 MS. HARRIS: Yes, Your Honor.

25 THE COURT: Please bring in the jury.

1 (Jury in at 3:09 p.m.)
 2 THE COURT: All right. Ladies and gentlemen of the
 3 jury, before we proceed any further, you may recall that I've
 4 told you many times that during the trial I may need give you
 5 an instruction. And it's come time for me to give you such an
 6 instruction. And I'll ask that you listen very carefully.

7 Ladies and gentlemen, the government's attorney made a
 8 comment during an objection which may have been taken by you as
 9 an indication that Mr. Lucas would or should testify in this
 10 case. First, I want to remind you the defendants are presumed
 11 innocent until proven guilty. The burden of proof is on the
 12 government until the very end of the case. The defendants have
 13 no burden to prove their innocence or to present any evidence
 14 or to testify.

15 Since the defendants have the right to remain silent, the
 16 law prohibits you from arriving at your verdict from
 17 considering that the defendants may not have testified. I
 18 instruct you that Mr. Lucas has absolutely no duty to testify.
 19 And you are not to hold it against him or to consider that in
 20 any way as to whether or not he is guilty or not guilty of the
 21 crimes that are charged against him in the indictment.

22 He has an absolute right under the Constitution of the
 23 United States not to testify. And that is not to be held
 24 against him by the jury. And I want you to keep that in mind
 25 at all times. I don't know whether Mr. Lucas will testify or

1 not. However, any remarks counsel for the government may have
 2 made that might lead you to expect Mr. Lucas to testify should
 3 be put out of your minds entirely. Thank you, ladies and
 4 gentlemen.

5 You may proceed with cross-examination, Ms. Harris.

6 MS. HARRIS: Thank you, Your Honor. If I could have
 7 the doc cam -- Elmo back -- doc cam.

8 BY MS. HARRIS:

9 Q. Mr. Palmer, I think you had stated earlier that it was the
 10 April 11th, 2000, letter from EPA with the proposed consent
 11 order that led to Mr. Lucas and Mr. Beall contacting you for
 12 representation?

13 A. Yes. It was the communication from EPA which proposed the
 14 entry into a consent order, as I recall, the document was
 15 captured -- was captioned, rather.

16 Q. And showing you that April 11th letter, which is
 17 Government Exhibit 178. In that letter, EPA expresses concern
 18 about the continuation of sales at the development before the
 19 delineations are completed; is that correct?

20 A. That's correct.

21 Q. And they indicate that that concern arises out of a site
 22 visit that two EPA employees made, Palmer Hough and Lee Pelej,
 23 on March 7th of 2000; is that correct?

24 A. That's what it says.

25 Q. That's what it says. Did you have some reason to doubt

1 the veracity of that statement?
 2 A. It's not a matter of veracity. It's that one thing you
 3 just asked me to look at talked about sales, and the next thing
 4 talks about dredged and/or fill material. And I am again
 5 looking at these things for the first time in a long time. And
 6 what I was looking for is something that connects the sale of
 7 property to the allegations of dredged or fill material
 8 associated with a sale.

9 Q. Could it be that a sale of a lot containing wetlands
 10 involving putting inhabitants on it who will then fill the lot
 11 in the course of living there?

12 MR. WITTMAN: Objection, Your Honor. Calls for
 13 speculation.

14 THE COURT: He can testify to what he perceived.
 15 Objection overruled.

16 A. Well, a lot of things could happen after a sale is made.

17 Q. In any event, the proposed order stated respondent shall
 18 immediately cease marketing, selling, conveying, et cetera.
 19 And that was never signed; right?

20 A. No. That was the proposed order.

21 Q. Now, up until this point, Mr. Lucas and his partner,
 22 Mr. Beall, had been representing themselves?

23 A. It appears that that is the case. I'm not aware --
 24 certainly during the time period of the cease and desist order
 25 by the Corps or the cease and desist order by the -- by EPA or

1 A. Yes.

2 Q. And you reviewed the law?

3 A. Yes.

4 Q. And you assessed the risks that your clients faced?

5 A. Which is -- yes. That's what lawyers do.

6 Q. Right. And then you advised them?

7 A. Yes.

8 Q. And you didn't say to them at the time: "This is
 9 outrageous; we're gonna fight this"?

10 A. No.

11 Q. You didn't say to them that the government has no
 12 authority over this property?

13 A. No, I didn't say that.

14 Q. You, in fact, told them that they should pursue a
 15 settlement with all parties?

16 A. That's exactly right.

17 Q. And you told them this because you know that when there's
 18 a significant risk of losing, it's best to negotiate?

19 MR. WITTMAN: Objection, Your Honor. Calls for
 20 speculation.

21 THE COURT: Overruled.

22 A. It's best to negotiate regardless of the risk. Settlement
 23 is far preferable in my opinion than protracted and expensive
 24 legal fights.

25 Q. In any event, your first letter to EPA was on May 10th.

1 the proposed order that EPA sent and you just put on the
 2 screen, I'm not aware that they were represented by legal
 3 counsel anywhere.

4 Q. So your understanding was that they had been dealing with
 5 the Department of Health, the Army Corps of Engineers and the
 6 EPA with no legal counsel?

7 A. Yes.

8 Q. And you had been head of MDEQ for the prior 12 years; is
 9 that right?

10 A. Yes. From September of 1987 until January 1st of 2000.

11 Q. And there was a big notice in the paper when you left DEQ
 12 and joined the law firm of Butler, Snow?

13 A. Yes. The law firm published an announcement.

14 Q. And your clients mentioned to you that they saw this
 15 notice when they sought you out for representation?

16 A. Dr. Beall specifically mentioned that to me, yes.

17 Q. So they came to you for guidance?

18 A. Yes.

19 Q. And they came to you because of your wealth of experience
 20 in dealing with these environmental matters?

21 A. That's what they said.

22 Q. And they came to you -- let's not be modest -- because you
 23 were considered one of the tops in the field?

24 A. Well, some would say that.

25 Q. Okay. And so you reviewed the history of the case?

1 And in that letter, which is Defense Exhibit 811, your entire
 2 representation of Mr. Lucas was premised on the fact that Big
 3 Hill Acres do contain jurisdictional wetlands?

4 A. Would you show me what you are referring to, please?

5 Q. I'm directing you to page 3 where it states: "To be sure,
 6 we now know that some of these development activities were
 7 conducted in regulated wetlands, but most were not."

8 A. That's what we said based on the initial information we
 9 gathered from Mr. Lucas and Dr. Sanders.

10 Q. And what regulated wetlands meant was that they were
 11 covered under the Clean Water Act under Section 404?

12 A. Regulated wetlands are covered under the Clean Water Act,
 13 Section 404.

14 Q. And you also stated down here, I think right here, that
 15 jurisdictional wetlands have been affected?

16 A. That's what it says.

17 Q. That's right. And there were several other references to
 18 regulated wetlands in your first letter?

19 A. Yes.

20 Q. There is also a -- I'll get a little closer -- statement
 21 that -- and I'm referring down here to what's highlighted --
 22 that Dr. Sanders has pointed out, I assume to Mr. Lucas, that
 23 several areas that he recognized not only as jurisdictional but
 24 impacted wetlands?

25 A. That is correct. Dr. Sanders, following the protocols

1 that were -- that were required of him in doing wetlands
2 delineations and impact delineations, had made that statement.

3 Q. And Dr. Sanders told Mr. Lucas or recommended to Big Hill
4 Acres that it refrain from further sales until the complete
5 delineation is done?

6 A. Refrain from further sales in areas that he preliminarily
7 had determined were going to be wetlands areas.

8 Q. But in any event, refrain until the complete
9 delineation -- is that what it says?

10 A. That's what the letter says.

11 Q. And the delineation was not completed until August 1st of
12 2000; correct?

13 A. That's approximately correct. Again, the reference here
14 is to those areas Dr. Sanders had flagged preliminarily as, in
15 his opinion, wetlands areas.

16 Q. And once again, turning to page 5, you state in your
17 letter that as pledged by Big Hill Acres to both the Corps and
18 EPA after the June 3rd '95 cease and desist, there have been no
19 additional development activities?

20 A. That's right.

21 Q. And that's based entirely on what your client told you?

22 A. It is. And when we asked them to differentiate among the
23 various kinds of activities that had occurred on the ground for
24 a number of years, which included roadway activity, tree
25 removal activity, house pad preparation activity, driveway

1 preparation activity, all of those activities and then sales of
2 property. When we referred to development activities, we were
3 referring to activities that were physically undertaken to
4 accomplish a real estate development.

5 Q. And according to the April 11th letter on March 7th, 2000,
6 Palmer Hough and Ley Pelej witnessed ongoing development
7 activities; is that correct?

8 A. Well, that's what they reported.

9 Q. And that's contrary to what your client was telling you?

10 A. Well, if they say they saw something and my client said
11 differently, then your assumption is correct.

12 Q. You then argue in this letter that the timber company
13 should be held accountable?

14 A. Yes.

15 Q. And you argue in this letter that the purchasers of the
16 lots should be held accountable?

17 A. If they have conducted activities that are not exempted
18 under Section 404, that is our argument.

19 Q. And you state in this letter, as Mr. Wiltman pointed
20 out -- you state in several letters that Mr. Lucas had no idea
21 that Big Hill Acres contained wetlands? I believe that was
22 somewhere on page 2, you said that.

23 A. Yes. That's what Dr. Beall and Mr. Lucas said to
24 Mr. Crawford and me in our very first conversation. And then
25 goes back to their original activities in 1994. As I recall,

1 it was the event in 1999 when they said they first began to
2 undertake this concept of Section 404 wetlands.

3 Q. Well, I think you imply in this letter that -- there was a
4 1996 visit from the Corps of Engineers; correct?

5 A. There was.

6 Q. And it was your understanding, based on conversations with
7 your clients, that at that time the Corps of Engineers blessed
8 this subdivision?

9 A. I wouldn't use the word, blessed. They gave me --
10 Mr. Lucas, not Dr. Beall -- because it was Mr. Lucas having the
11 phone conversation with Mr. Ephraim. Mr. Lucas gave me his
12 account of that conversation. And it was essentially that as
13 long as you stay up on the high ground with what you're doing,
14 you're okay. But I wouldn't use the word, blessed.

15 Q. Well, you subsequently got a copy of Troy Ephraim's
16 incident report from that August 7th, 1996, visit?

17 A. Yes. Sometime later -- some lengthy time later, yes, we
18 got it.

19 Q. And you saw that that report specifically stated that the
20 Corps warned Mr. Lucas about further development without a
21 permit?

22 A. That's what Mr. Ephraim said he did.

23 Q. That's right. And you saw that in that report,

24 Mr. Ephraim doubted Mr. Lucas was being honest about his
25 intentions?

1 A. Well, that's what Mr. Ephraim said in his report.

2 Q. And you knew that this report didn't square with what your
3 client had told you?

4 A. When I read it, I immediately concluded that it didn't
5 because that's not what Mr. Lucas said happened.

6 Q. Okay. And at that point in time, did you have any reason
7 to doubt the veracity of the United States Army Corps of
8 Engineers' employee, Troy Ephraim?

9 A. I don't even know Mr. Ephraim. But again, I'm talking
10 about a client who gives me his account of a situation and then
11 months later find a government record that deviates from that.
12 I will, at first blush, always accept the accounting of my
13 client.

14 Q. Ms. Cox -- Thelma Cox responded to your May 10th letter on
15 May 30th, Defense Exhibit S-13. And she actually had looked
16 into your suggestion that the timber companies be held
17 accountable and disagreed with your argument; isn't that
18 correct?

19 A. That's correct.

20 Q. She nevertheless, invited you to present more evidence,
21 either facts or law of timber company accountability, if you
22 had any, didn't she?

23 A. Yes. That's what her letter says.

24 Q. And you never did take her up on that offer, did you?

25 A. No. We considered the dimensions of doing that.

1 Dr. Sanders had already gotten enough into his work that we
 2 asked him if he would be able to at that point in time
 3 differentiate among the types and kinds of impacts that he had
 4 observed and attribute those types and kinds of impacts to
 5 particular parties doing particular things. And Dr. Sanders
 6 said that he could not. We were faced with a decision of
 7 pressing forward to try to promote a settlement or stopping and
 8 launching into collateral litigation to press this party point
 9 at the time. And we chose not to.

10 Q. So the answer was no? You didn't?
 11 A. We didn't pursue it further for those reasons.
 12 Q. She also looked into your suggestion that the property
 13 owners themselves were liable and pointed out to you, I
 14 believe, on page 2 that the purchasers are lower income
 15 families who are first time purchasers and working people who
 16 need affordable housing. And she was quoting there from one of
 17 the answers that Mr. Lucas and Mr. Beall gave in their
 18 information request or maybe just Mr. Lucas. She also pointed
 19 out, didn't she, that these people were not made aware of the
 20 fact that there were wetlands on their property?
 21 A. The exact words, Ms. Harris, are: Most were not aware of
 22 the existence of wetlands and are not aware of the legal
 23 ramification of fill activity on their lots, which is exactly
 24 the same position that Dr. Beall and Mr. Lucas advanced to
 25 Mr. Crawford and me at our first meeting.

1 Q. Well, it's here that, I believe, EPA through Ms. Cox first
 2 indicate that the fact that this information is not making its
 3 way apparently to the homeowners is the reason why they are
 4 going to have to engage in community outreach; correct?
 5 A. Yes. I testified to that earlier.
 6 Q. Now, you advised both EPA and your clients that the sale
 7 of lots containing wetlands in and of itself did not violate
 8 Section 404 of the Clean Water Act?
 9 A. I did. And they agreed.
 10 Q. But you would agree, wouldn't you, that the placement of
 11 underground septic systems into federally protected wetlands
 12 does violate Section 404 --
 13 A. Yes.
 14 Q. -- if done without a permit?
 15 A. Doing anything in a regulated wetland, which is regulated
 16 under Section 404, unless it is specifically exempted is
 17 subject to the regulatory requirements of Section 404.
 18 Q. And you would so advise any client?
 19 A. Yes. Because that's the law.
 20 Q. And you would also agree, wouldn't you, that the placement
 21 of an underground septic system into a wetland violates
 22 Mississippi State law, the regulations regarding individual on
 23 site wastewater disposal systems?
 24 MR. WITTMAN: Again, Your Honor, object to relevance.
 25 Violation of Mississippi law.

1 THE COURT: Objection sustained. What is relevant
 2 here for our purposes, Ms. Harris, is what this attorney may
 3 have told his client, which goes to knowledge. So let's try to
 4 focus on that. Objection sustained.
 5 BY MS. HARRIS:
 6 Q. Would you agree that selling property containing wetlands
 7 by misrepresenting the nature of that property is fraud?
 8 MR. WITTMAN: Objection, Your Honor.
 9 THE COURT: Objection sustained.
 10 Q. You went over a June 9th letter that you submitted to EPA
 11 containing responses to information request. That was Defense
 12 Exhibit 1193?
 13 A. Yes.
 14 Q. Do you recall that one? And in that June 9th letter,
 15 there's a specific question -- and that's Question 11 --
 16 about -- do you have a copy of that?
 17 A. Yes, I do.
 18 Q. About roads. The question asking: When did respondent
 19 begin to update old logging roads and then construct new roads?
 20 Provide the dates when work began. Now, this description of
 21 the road construction goes on for nearly three pages; correct?
 22 A. Correct.
 23 Q. And as I stated, this was submitted June 9th, 2000?
 24 A. Yes.
 25 Q. Now, this description of the roads in Big Hill Acres does

1 not mention Sugargate Road; does it?
 2 A. I would have to read each of the paragraphs and see. I
 3 can't recall from memory, without doing that, if it does or
 4 doesn't. But if you say it doesn't, then I will accept that,
 5 that it doesn't.
 6 Q. I've highlighted the road names on this copy, if it will
 7 help.
 8 A. I don't see, at first blush, a reference to Sugargate, no.
 9 Q. And you don't see either a reference to Barksdale, do you?
 10 A. Excuse me?
 11 MR. WITTMAN: Objection. The document is in
 12 evidence. And Ms. Harris represents the road is not in there.
 13 We can proceed with that.
 14 THE COURT: Are you testing his ability to see?
 15 MS. HARRIS: No, Your Honor. I'm just testing what
 16 information was provided and what roads were actually built
 17 after June 9th, 2000.
 18 THE COURT: This witness can shed no more light than
 19 what is already in evidence, the document itself. Objection is
 20 sustained.
 21 BY MS. HARRIS:
 22 Q. Just to summarize then, if I may, the following roads are
 23 not mentioned, are they? Sugargate, Barksdale, Regale,
 24 Burgundy, Redgate, Roanoke.
 25 MR. WITTMAN: Objection.

1 THE COURT: I just sustained that objection. Sustain
2 it again.

3 MS. HARRIS: I'll move on.

4 BY MS. HARRIS:

5 Q. Would you agree that roads that are not mentioned in
6 Question 11 are not mentioned because they were being
7 constructed at that time or at a later time?

8 MR. WITTMAN: Again, Your Honor, object to
9 speculation.

10 THE COURT: He can testify if he knows. Objection
11 overruled.

12 A. And I don't know the answer to that question, about why
13 any roadway was not mentioned.

14 Q. I'll move on to a letter written June 15th, 2000, to
15 Mr. Lucas from the Mississippi Department of Environmental
16 Quality and the Department of Health. It's Government
17 Exhibit 132. And I don't know if Mr. Wittman went over this
18 one. But do you recall being provided this letter by your
19 client?

20 A. I do recall this letter, yes. It's difficult to read on
21 the screen. But because it's dated June 15, 2000, it would
22 have been after we commenced representation of Dr. Beall and
23 Mr. Lucas. And so we expected them to bring to us any and all
24 correspondence from any governmental entity.

25 Q. And you recall that it was yet another cease and desist

1 A. It appears to be such, yes.

2 Q. And it's an e-mail from Thanne Cox to Palmer Hough and Lee
3 Pelej and others involved in this case?

4 A. Uh-huh.

5 Q. And it references a site visit that Ms. Cox and Mr. Hough
6 made on July 20th?

7 MR. WITTMAN: I'm going to object to her testifying
8 what's in the document until she offers it.

9 THE COURT: Objection sustained.

10 MS. HARRIS: Your Honor, I can link it up.

11 THE COURT: You want him to just identify it?

12 MS. HARRIS: It indicates --

13 THE COURT: Don't tell me what it indicates. You
14 want this witness to identify it? Is he capable of identifying
15 it? Do you know what that is, Mr. Palmer?

16 THE WITNESS: No, sir. Ms. Harris characterized it
17 as an internal EPA document. But it's not one of my firm's
18 documents.

19 THE COURT: All right. He doesn't know what it is.

20 BY MS. HARRIS:

21 Q. Did you receive a telephone call or do you recall getting
22 a telephone call from Thanne Cox shortly after July 20th of the
23 year 2000 regarding continuing work in Big Hill Acres,
24 specifically on Roanoke Road, Regale and Sugargate Roads?

25 A. I don't recall getting the phone call. But that's four

1 order, do you not?

2 A. Yes. It was -- would you flip to the last page? I think
3 I remember the signatories. But yes, it is a joint directive
4 issued by representatives of the Department of Environmental
5 Quality and the state Department of Health.

6 Q. You mentioned the June 22nd, 2000, meeting in Jackson with
7 a whole cast of people; correct?

8 A. Yes.

9 Q. And on June 23rd, that's the date that -- having the topic
10 arise at the June 22nd meeting regarding continuing sales, you
11 had Mr. Crawford speak to Mr. Lucas and your other clients; and
12 they agreed on June 23rd not to sell any more lots, period,
13 without authorization?

14 A. Yes.

15 Q. And you conveyed that to Betty Ruth Fox?

16 A. Betty Ruth Fox.

17 Q. Now, let me show you what I'm marking as Government
18 Exhibit 213, which you have seen before.

19 (Off the record discussion between government and defense
20 counsel)

21 BY MS. HARRIS:

22 Q. Now, let me show you what's been marked as Government
23 Exhibit 213, which I believe you may have seen one time before.

24 A. Yes.

25 Q. This is actually an internal EPA document; correct?

1 and a half years ago. But I do not recall right now getting a
2 call. But we were engaged. And if anyone from EPA, certainly
3 Ms. Cox, the attorney of record, had called, I would have or
4 Mr. Crawford would have responded.

5 Q. Do you remember anything at all about further development
6 in July of 2000 in Big Hill Acres?

7 A. No, I would not. I was not on the ground -- being in
8 Jackson -- in the developments in Jackson County. I was not
9 down there.

10 Q. Mr. Wittman next went to the July 26th, 2000, letter,
11 which contained the second cease and desist from the EPA.

12 A. Excuse me. The July?

13 Q. The July 26th, 2000, letter, which contained a second
14 cease and desist from the EPA, which I believe is Government
15 Exhibit 133. And in this letter, I believe, once again, EPA
16 outlined their evidence of ongoing activity, which was
17 basically through site visits; is that correct?

18 A. That is correct.

19 Q. And I think that it might be this letter -- it might be
20 the next one -- where they indicated that between the cease and
21 desist of June 3rd, 1999, and that following year, Big Hill
22 Acres had sold 117 additional lots; is that --

23 A. Well, that's what they set forth in their recitals as a
24 predicate for their mandate. So it's there. That's what they
25 said.

1 Q. The sale of these 117 additional lots would be contrary to
2 what Mr. Lucas told the Corps in his June 15, 1999, letter;
3 correct?

4 MR. WITTMAN: Objection, Your Honor,
5 Mischaracterizes the letter.

6 THE COURT: Overruled. He can testify if he knows.

7 A. I would have to go back and look at the language in the
8 letter. And I will, if you can retrieve it, since you're
9 asking me to compare one set of facts with an earlier
10 representation.

11 Q. Okay. Going back then to the June 15th, '99, letter --
12 I'm gonna get the exhibit number, which I believe is
13 Government's Exhibit 130.

14 A. Yes.

15 Q. I've just underlined it.

16 A. Yes.

17 Q. It states: "No additional lots containing impacted
18 wetland will be sold without authorization from your office"?

19 A. That's what it said.

20 Q. I'm gonna show you something that you have not seen
21 before, but what's previously been admitted as Government's
22 Exhibit 209. This is an -- a graphic prepared by Peter Stokely
23 of the Environmental Protection Agency that depicts the
24 boundaries of Big Hill Acres. You can see that, can't you?
25 A. Yes.

1 Q. And the jurisdictional wetlands determination made by D.R.
2 Sanders, which would be the green lines, if you could see that.

3 A. I can. And what's the date of this view?

4 Q. I believe this is a 2003 aerial satellite image -- aerial,
5 I mean.

6 A. Thank you.

7 Q. And each one of the lots -- each one of these red dots
8 represents a lot in Big Hill Acres that contains wetlands on
9 it.

10 MR. WITTMAN: Your Honor, I'm gonna object to this
11 line of cross-examination. This witness has not seen this
12 document before.

13 THE COURT: What is your question?

14 MS. HARRIS: My question, if I could get to it, is
15 there are 656 red dots on this graphic in Big Hill Acres. And
16 I would ask --

17 MR. WITTMAN: Your Honor, I'm gonna object to her
18 testifying.

19 MS. HARRIS: That was testimony --

20 THE COURT: Overruled. Let me hear the question.

21 BY MS. HARRIS:

22 Q. Would you agree with me that one would be hard pressed to
23 sell a lot in Big Hill Acres that did not contain wetlands?

24 A. I'm not going to agree with you on the characterization of
25 hard pressed. There are certainly, according to Dr. Sanders'

1 own work product, substantial numbers of lots that by his own
2 opinion contained wetlands. There are also substantial numbers
3 of lots that don't contain any. So to say that somebody would
4 be hard pressed to buy one that didn't, then I would not agree
5 with that. I would call it an over characterization.

6 Q. On August 1st, 2000, Government Exhibit 122, you submitted
7 to the EPA the D.R. Sanders' delineation; correct?

8 A. Yes.

9 Q. And the stated purpose of this delineation was to
10 determine federally regulated wetlands; correct?

11 A. The stated purpose was to give to EPA Dr. Sanders'
12 opinions of where wetlands areas were located on the property
13 and to also identify, again, as required by EPA before we
14 became engaged, the identification of certain kinds of impacts.

15 That was the purpose of the Sanders' work at that point before
16 we then later asked him to prepare a summary report.

17 Q. You, I think, implied in your direct testimony that
18 Dr. Sanders had some issues with Mr. Hough and there were some
19 disagreements on the actual delineations?

20 A. Yes, according to Dr. Sanders' conversations with me.

21 Q. Were you aware that when Mr. Hough pointed out areas where
22 they disagreed to Dr. Sanders, that Dr. Sanders did, in fact,
23 agree that there were errors?

24 A. I'm aware that in some situations Dr. Sanders did, in
25 fact, agree to amend his call. And in other areas, Dr. Sanders

1 declined to do that.

2 Q. Were you aware that when these errors were usually pointed
3 out, Dr. Sanders said it was because of his son or Arville
4 Touchet?

5 A. Well, I'm not aware of that detail of conversation between
6 these people on the ground.

7 Q. And are you aware that the area in which there was any
8 disagreement at all comprised less than six acres of the entire
9 2,600 acre tract?

10 A. I'm not aware of the number, no.

11 Q. Moving on to your September 12th, 2000, letter, which is
12 Defense Exhibit 818, you, once again, assured or were assured
13 by Big Hill Acres that all sales transactions had ceased on
14 Friday, June 23rd; correct?

15 A. We were assured that this had occurred, yes.

16 Q. And that was, again, based on what your clients had told
17 you?

18 A. Yes.

19 Q. And you also pointed out or took the opportunity to point
20 out that you had spent quite -- your clients had spent quite a
21 sum of money in delineations, \$150,000; and in efforts to
22 stabilize the area through grass seed and hay, I believe you
23 said, to the tune of \$375,000?

24 A. Yes.

25 Q. Now, you wouldn't have encouraged your clients to spend

1 that kind of money if you felt that the government had no
2 regulatory authority over this property, would you?

3 MR. WITTMAN: Objection, Your Honor.

4 THE COURT: Overruled.

5 A. No. Again, as I have testified repeatedly today, we began
6 our attempt to represent these clients with a viewpoint of
7 promoting settlement. Given Dr. Sanders' work, we were looking
8 at the prospects ultimately of government requirement to do
9 restoration, additional stabilization and mitigation. And so
10 we encouraged our clients to continue to work wherever there
11 was destabilized soil to prevent any further erosion, all in an
12 effort to demonstrate a good faith approach to resolving these
13 issues.

14 Q. On October 20th, 2000 in a letter from you to FPA,
15 Government Exhibit 124, you were seeking interim relief
16 regarding 55 particular lots and seeking to sell these lots to
17 stem the -- what, the cash flow loss?

18 A. Yes.

19 Q. And shortly thereafter, as you've pointed out earlier,
20 there was a response. And particular lots were specified as
21 lots that could be sold; some that could be sold with a
22 disclaimer; and others that could not be sold?

23 A. That's right. And I've also said that I was very
24 appreciative of EPA's granting this relief. It was rationally
25 based. And it really helped our clients deal with their fiscal

1 difficulties.

2 Q. And you stated that you were familiar with the Big Hill
3 Acres contracts; correct?

4 A. We had been given copies of the documents that they had
5 been using over a number of years to effect their sales, yes.

6 Q. Can you identify the following Government's Exhibit 212(n)
7 through 212(q) -- (r). I'm sorry. 212(r).

8 A. These are marked 212(n) through 212(r).

9 Q. And they are Big Hill Acres contracts for the sale of
10 property; correct?

11 A. That's what they are captioned. So I presume yes, they
12 are. And the parties that are named at the outset below the
13 header reflect Big Hill Acres, yes.

14 MS. HARRIS: Your Honor, I'd move for admission of
15 Government's Exhibits 212(n) through (r).

16 MR. WITTMAN: Are those covered by a prior
17 stipulation?

18 MS. HARRIS: They're just contracts we got. These
19 arose in the course of his testimony.

20 MR. WITTMAN: No objection as to authenticity, Your
21 Honor. They appear to be authentic documents.

22 THE COURT: If there's no objection then, they'll be
23 marked and admitted.

24 (Exhibits G-212(n) through G-212(r) marked and received in
25 evidence)

1 BY MS. HARRIS:

2 Q. Once again, you stated that your clients had agreed to
3 cease all sales as of June 23rd, 2000?

4 A. That's correct.

5 Q. Now, Government Exhibit 212(n) is the sale of lot AI-15 on
6 July 6th of 2000; correct?

7 A. That's what it says.

8 Q. And Government Exhibit 212(o) involves the sale of lot F-8
9 on August 17th of 2000; correct?

10 A. That's what it says.

11 Q. Government Exhibit 212(p) involves the sale of lot FR-20.
12 And you can tell from the sheet attached to it that that was on
13 August 24th of 2000; correct?

14 A. Let me look because there's no date on the cover sheet.
15 Where are you looking for a date on the second sheet?

16 Q. You can tell the date right there (indicating).

17 A. Okay.

18 Q. That's where they also indicate the date.

19 A. I see it.

20 Q. And Government Exhibit 212(q) involves a rental or lease
21 of lot YY-8 on September 28th, 2000?

22 A. That's the date shown.

23 Q. And Government Exhibit HH-5 involves the sale of lot
24 HH-5 -- I'm sorry. Government Exhibit 212(r) is the sale of
25 lot HH-5 on October 27th, 2000; correct?

1 A. That's what this shows.

2 Q. Were you aware of these sales of property?

3 A. No.

4 Q. Were these contrary to the agreement that had been made
5 with the Environmental Protection Agency not to sell property?

6 A. Yes.

7 Q. Turning your attention back to this particular set of lots
8 that were listed as the do not sell lots, at least without
9 authorization and a premitigation plan, in Government Exhibit
10 135. I want to show you what's been marked as Government
11 Exhibits 212(a) through (n), I believe. And once again, ask
12 you if you can identify these as the sale of lots by Big Hill
13 Acres.

14 A. Well, these are copies of contracts, which, as the ones
15 you just showed me, appear to be records of sales transactions
16 involving Big Hill Acres properties.

17 MS. HARRIS: Your Honor, I'd move for the admission
18 of Government's Exhibits 212(a) through -- I think it's (n) --
19 (m), as in Mary.

20 THE COURT: Any objection?

21 MR. WITTMAN: It would take a lot of time to go
22 through all these individually. We've just seen them for the
23 first time here. They do appear to be authentic. If counsel
24 represents they are documents that are received from us, I will
25 accept that representation.

1 MS. HARRIS: They were, Your Honor.
 2 THE COURT: Without objection, they'll be marked and
 3 admitted Government's Exhibit 212(a) through (m).
 4 (Exhibits G-212(a) through G-212(m) marked and received in
 5 evidence)
 6 BY MS. HARRIS:
 7 Q. Turning your attention to Government's Exhibit 212(a),
 8 that is a contract for sale between Big Hill Acres and someone
 9 buying lot AB-9 on June 16th, 2001; correct?
 10 A. That's what it says.
 11 Q. Okay. And lot AB-9, there's one of those listed in the do
 12 not sell category in your October 31st, 2000, letter; is that
 13 correct?
 14 A. That is what the chart in the letter shows.
 15 Q. And this was a letter that you forwarded to your clients?
 16 A. Yes.
 17 Q. Government's Exhibit 212(b) involves the sale of lot AJ-5
 18 on May 12th, 2001. AJ-5 being in Section 11, which is also
 19 listed on that chart; correct?
 20 A. Correct.
 21 Q. Government Exhibit 212(c) involves the sale on May 4th,
 22 2001, of lot P-10; which is also on that list of do not sell
 23 lots; correct?
 24 A. Yes. Now, I'm switching back and forth from the screen to
 25 the documents trying to follow you here. I think I can concur

1 with what you just said.
 2 Q. Okay. If it helps, lot P-10 is written on the last
 3 line -- the first one in the last line under Section 8 and Fox
 4 Run extension on your screen.
 5 A. Give me the exhibit number again, please.
 6 Q. P-10 was Government Exhibit 212(c).
 7 A. 212(c). Okay. I see P-10 written under description of
 8 land parcel.
 9 Q. And you see it on the list on the last line as under the
 10 do not sell column?
 11 A. Yes, I do.
 12 Q. Government Exhibit 212(d) --
 13 THE COURT: Ms. Harris, do you intend to go through
 14 each one of these contracts and simply have this witness
 15 confirm and compare between one exhibit and another?
 16 MS. HARRIS: I just have a few more. I do intend to
 17 do that. I could just list them.
 18 THE COURT: I think the jury is very capable of
 19 making the same comparison and reaching the same conclusions
 20 without the necessity of this witness going over it. Let's
 21 move along to something that this witness can be helpful with.
 22 BY MS. HARRIS:
 23 Q. Were you aware of the fact that your clients were selling
 24 properties after the October 31st, 2000, letter that were
 25 specifically on the do not sell list?

1 A. No.
 2 Q. That would affect the statement you made, wouldn't it, in
 3 your October 30th, 2000, letter that Big Hill Acres was not
 4 having any new income; correct?
 5 MR. WITTMAN: Objection to argumentative, Your Honor.
 6 THE COURT: Objection overruled.
 7 A. If I had known about these transactions, which I did not,
 8 then yes, it would have certainly affected any representation
 9 about losing income. But I've testified that I was not aware
 10 of what you now have introduced into evidence. And so the
 11 statement that I wrote at the time, having no knowledge of
 12 this, would stand.
 13 Q. I'm not trying to impugn your integrity. I'm just saying
 14 that they were, in fact, making money, weren't they? Your
 15 clients were, in fact, making money because they were selling
 16 lots?
 17 A. Well, these contracts reflect transactions that called for
 18 the payment of proceeds to the sellers, yes.
 19 Q. And they were, in fact, not missing opportunities, as one
 20 of your other letters said, referring to lost opportunities
 21 because they couldn't sell property?
 22 A. Well, I don't know about the relative numbers of these
 23 things that you're talking about and how big a lost opportunity
 24 it would be. But certainly to have made a flat statement that
 25 all opportunities would have been lost in the face of some

1 transactions would have been a misrepresentation.
 2 Q. Would you agree that it looks like your clients were
 3 telling you one thing and doing another?
 4 MR. WITTMAN: Objection, Your Honor. Argumentative.
 5 THE COURT: Objection sustained.
 6 BY MS. HARRIS:
 7 Q. Just one more note on that October 31st letter because it
 8 did come up. In that last paragraph, Ms. Cox does tell you
 9 that she is leaving the office and that Paul Schwartz will be
 10 taking over; correct?
 11 A. Yes, she does.
 12 Q. You mentioned in that -- in your direct testimony that at
 13 a certain point -- and it might have been the October 20th
 14 letter -- you approached EPA with the idea of selling land that
 15 had been previously inhabited?
 16 A. Yes. The letters will reflect that we asked EPA about
 17 resales.
 18 Q. And I believe that was the October 20th, 2000, letter;
 19 correct?
 20 A. Well, I've gotten so much paper here, I really need to
 21 clear the desk, if you don't mind.
 22 Q. Let me see here. I've got a lot of paper, too.
 23 A. Did you say the October or September 28th, October 28th?
 24 Which letter, please?
 25 Q. I'm wrong. It was the November 1st letter, which was --

1 I'm not sure what exhibit that was.
 2 MR. WITTMAN: Defendants' Exhibit 822, I think.
 3 BY MS. HARRIS:
 4 Q. Defense Exhibit 822, where I think you bring up the idea
 5 of selling lots that had been foreclosed upon?
 6 A. Yeah. I was looking for the letter. I just don't have it
 7 here in this stack.
 8 Q. I've got it on the screen for you.
 9 A. Okay.
 10 Q. And you indicate in this letter that you will compile a
 11 list and submit it for review regarding these particular
 12 properties?
 13 A. That's what we said. It was being compiled and will be
 14 submitted for review. Would you back up and let me see the
 15 remainder of this letter, please, so I can see the context of
 16 what was being said?
 17 MR. WITTMAN: I think he wants to see the first page
 18 of this exhibit.
 19 MS. HARRIS: Oh, the first page.
 20 BY MS. HARRIS:
 21 Q. I thought you wanted --
 22 A. Yeah. I just would like to see what paragraphs come
 23 before.
 24 Q. This was that one day turnaround, if you recall, where you
 25 tried to correct the errors on the original EPA list that we

1 just referred to.
 2 A. Yes. Okay. I now remember which letter we specifically
 3 talked about. That was the one day turnaround.
 4 Q. This was the one where you indicated you would compile a
 5 list and send it?
 6 A. Yes. We had asked Mr. Lucas and Dr. Beall to begin, as
 7 the letter says, compiling a list of those lots that they
 8 expected to be available for resale.
 9 Q. Okay. And then turning your attention to the letter that
 10 you wrote February 28th, 2001. That would be the front page
 11 just to orient you. Once again, requesting certain relief
 12 regarding the sale of property?
 13 A. Yes.
 14 Q. I wanted you to turn to the last page in that under
 15 summary where, once again, you state that you will submit your
 16 updated inventory of available lots.
 17 A. That's what we said.
 18 Q. Okay. So all of the delay here is not attributable to the
 19 Environmental Protection Agency, is it?
 20 A. Well, no. As we said earlier, there are a lot of things
 21 going on during this particular time with the transition from
 22 Ms. Cox to Mr. Schwartz. Part of that was simply the hand off
 23 within EPA, which certainly I acknowledge. The recitations
 24 about additional work that we were contemplating being done
 25 certainly was a part of that as well.

1 Q. Mr. Wittman showed you a letter, which I don't happen to
 2 have, I believe written on 12-21, 2000, where you first learned
 3 of the Department of Justice's involvement; is that correct?
 4 A. Yes.
 5 Q. And I think you expressed alarm at that point that this
 6 case had gotten to that stage, did you --
 7 MR. WITTMAN: I don't think the witness expressed any
 8 alarm, Your Honor.
 9 BY MS. HARRIS:
 10 Q. You mentioned something about surprise? What was it you
 11 said?
 12 A. Well, I believe when I was asked about the letter and I
 13 was shown the letter, I made the comment that I now better
 14 understand in my current capacity than I did then about how
 15 these matters originate within EPA and at a point in time maybe
 16 referred to the Department of Justice. And when we got the
 17 letter that the Department of Justice had become involved, I
 18 was surprised at that point. But EPA had made a decision to
 19 refer the matter.
 20 Q. And you're aware, since you are regional administrator,
 21 that the EPA does have guidelines regarding the enforcement
 22 when a case is civil, when a case is criminal?
 23 A. Yes.
 24 Q. And you're aware that cases go criminal when there are
 25 what's considered blatant conduct?

1 MR. WITTMAN: Objection, Your Honor.
 2 THE COURT: Objection sustained.
 3 BY MS. HARRIS:
 4 Q. Let me turn your attention back to your February 28th
 5 letter on page 4.
 6 A. Okay. I have the letter in my hand. Okay.
 7 Q. At this point on February 28th, 2001, you were still
 8 operating on the premise that these are jurisdictional
 9 wetlands; correct?
 10 A. Well, we were operating on Dr. Sanders' work product where
 11 he, as I've said several times, followed the protocols he was
 12 expected to at the time to delineate wetlands and also to
 13 depict impacts or alterations to those wetlands. So we were
 14 continuing to operate on that premise.
 15 Q. Okay. And turning to page 5 -- this has come up on
 16 several occasions. So I don't want to beat it to death. But
 17 in all of these letters regarding repairs to failing systems,
 18 which would include your February 28th, letter; your March 2nd
 19 letter of 2001 to Ricky Boggan; his response to you; and your
 20 response again on March 9th, '01, is it not correct that
 21 repairs were authorized and no action -- adverse action would
 22 be taken always on the condition that the Department of Health
 23 make a recommendation?
 24 A. That was the agreement that Mr. Boggan and I struck. And
 25 that is the agreement that I recounted in my letter to him as

1 clearly as I could, that we anticipated that the Department of
 2 Health would play an active role in resolving problems because
 3 the Department of Health had complained about not being as
 4 active in the early stages of these developments as they -- as
 5 they wanted to be. And so in an effort to bring the health
 6 department into these repairs and also because of simply the
 7 tensions in the community, I agreed with Mr. Boggan to a
 8 certain process that would be followed in terms of getting some
 9 people some help.

10 Q. So you never advised your clients that they had blanket
 11 authority to make repairs to failing systems without Department
 12 of Health involvement, did you?

13 A. No. Because that would contravene the letter you have on
 14 the screen.

15 Q. And all of these letters were provided to your clients?

16 A. Yes.

17 Q. Directing your attention to your March -- well, the March
 18 19th, 2001, letter from Paul Schwartz to you where, once again,
 19 lots are divided into categories. I think this is the
 20 correction to -- that you had asked for back on November 1st?

21 A. Yes. Where there were some inadvertent errors in EPA's
 22 technical review. We called them to EPA's attention. And I
 23 believe this is the letter that corrects those mistakes.

24 Q. And this letter, as I said, was March 19th, 2001, and you
 25 provided this to your client?

1 A. We provided all of these letters to our clients.

2 Q. And AI-14 was on the Category 3, do not sell list?

3 A. That's what it says.

4 Q. And were you aware that Big Hill Acres sold that lot AI-14
 5 on May 15th, 2001?

6 A. No, I was not.

7 MS. HARRIS: I'm trying to skip some letters. So the
 8 Court's indulgence.

9 BY MS. HARRIS:

10 Q. Once again, in your April 18th, letter, 2001, Defense
 11 Exhibit 834, which involved all of the color coded maps that
 12 were just moved into evidence, you were requesting essentially
 13 blanket authority to sell land?

14 A. We were asking for general releases, as I remember. I
 15 need to get the letter. And I have it now. As I have
 16 testified earlier today and even on cross here, EPA did release
 17 at our request certain lots. And the distinctions, just to
 18 repeat, were that the Category 1 lots contained no
 19 jurisdictional wetlands whatsoever. So there was no reason for
 20 the government to object to transactions affecting those
 21 properties. And they said so.

22 The Category 2 lots were those where Dr. Sanders had
 23 delineated the presence of some wetlands on those properties.
 24 And the government approved a number of those to be sold
 25 provided that the government required and drafted notice was

1 included in the sale transaction.

2 It was the Group 3 lots that on several occasions in these
 3 letters we were at loggerheads over because the government had
 4 offered to consider them on a case by case basis. As I
 5 testified earlier, though, they were going to require
 6 premitigation for the existing impacts. And so we continued to
 7 not agree about the Category 3 lots.

8 Q. And in the July 6th, 2001, letter from Paul Schwartz to
 9 you, which is Government Exhibit -- I'm sorry -- Defense
 10 Exhibit 836, in response to your April 18th letter, once again,
 11 EPA said no blanket release; correct?

12 A. They said no blanket release. And we immediately referred
 13 back to those Category 3 lots, which they had consistently said
 14 they would not issue a blanket release on.

15 Q. So it remained a case by case determination?

16 A. For the Category 3 lots, it did. Even though we asked for
 17 them to give us additional relief on the Category 3s with a
 18 commitment to then have Mr. Goff and Mr. Tomlinson take the
 19 approach that all impacts Dr. Sanders had delineated would be
 20 accounted for in the final work out plan. EPA was not willing
 21 to go that far. So the relief we got was on Category 1 and 2
 22 lots. But we did not get blanket release on Category 3 lots,
 23 no.

24 Q. And your clients knew there was no blanket authority to
 25 sell Category 3 lots?

1 A. That's what the letter said.

2 Q. And as you stated several times, you gave copies of the
 3 letters to your clients?

4 A. Yes.

5 Q. Now, there's been a lot of talk in your direct testimony
 6 about efforts at settlement --

7 A. Uh-huh.

8 Q. -- trying to settle, trying to settle?

9 A. Uh-huh.

10 Q. Would you agree that it's hard for the government to
 11 settle a case when a lawyer is saying one thing and his client
 12 is doing something else?

13 MR. WITTMAN: Objection. Argumentative, Your Honor.

14 THE COURT: Objection sustained.

15 BY MS. HARRIS:

16 Q. You stated that you weren't aware that your clients
 17 continued to sell lots; is that correct?

18 A. Correct. But at no time until today, this afternoon, was
 19 I ever aware of that activity, which is evidenced by these
 20 agreements. And at no time did EPA ever say a word to me about
 21 things like this, if they, in fact, knew about it. So they
 22 didn't say anything to me about these activities that you are
 23 talking about, and I was not aware of them.

24 Q. Didn't they make completed -- repeated requests for your
 25 client to stop selling land?

1 A. Well, they did. But Ms. Harris, you are now producing
 2 sales documents that reflect otherwise. My point is, at no
 3 time in all of this exchange of correspondence with EPA did
 4 anybody show to me or Mr. Crawford or anybody else in our firm
 5 a document that would reflect a breach of agreement on the part
 6 of our clients with EPA. Nothing was ever said to us about any
 7 of this activity, which now I'm learning about today.
 8 Q. I think you indicated in your direct testimony that you
 9 thought the Environmental Protection Agency was acting
 10 unethically. Did I hear you say that?
 11 A. I don't know that I used the word unethical. I explained
 12 I was agitated about the conduct of certain EPA folks in the
 13 community down there as reported in the press with statements
 14 attributed to those people and as reported by people who
 15 attended meetings and heard these folks make statements. It
 16 was the context of that conduct that had irritated me.
 17 Q. And you said during, I think, your cross-examination when
 18 I asked you about the discrepancies and what Mr. Lucas told you
 19 about Troy Ephriam's visit and what Troy Ephriam's report was,
 20 that there's a possibility because they didn't square, you
 21 accepted your clients' words --
 22 A. I did.
 23 Q. -- was untruthful?
 24 A. Say that again.
 25 Q. Was Mr. Ephriam --

1 MR. WITTMAN: Object on the grounds of repetition,
 2 Your Honor.
 3 THE COURT: Well, he's testified that he accepted his
 4 clients' word. Let's move on.
 5 BY MS. HARRIS:
 6 Q. And in a conversation that we had last night, you told me
 7 that you thought the Department of Health had a vendetta --
 8 MR. WITTMAN: Your Honor, the conversation she had
 9 last night --
 10 THE COURT: Well, I'm going to overrule that. And
 11 I'm going to assume that this is a relevant question that has
 12 something to do with this case. You may go ahead and restate
 13 your question.
 14 BY MS. HARRIS:
 15 Q. In a conversation that you and I had last night, you
 16 indicated to me that you thought that the Department of Health
 17 had a vendetta against your client and they wanted to take him
 18 down?
 19 A. That was the conclusion that I came to after taking the
 20 statements of Dr. Beall and Mr. Lucas about relationships
 21 between these gentlemen, mainly Mr. Lucas, and the health
 22 department. And what Mr. Lucas characterized as a similar, I
 23 would say, antagonistic relationship between Mr. Thompson and
 24 the health department.
 25 So based on the information that I was given by my clients

1 and the attitude of the health department, then I drew a
 2 similar conclusion here that the difficulties which apparently
 3 had existed between these parties for a long time had boiled
 4 over and now were ripe for treatment in an enforcement action.
 5 And that's why I used the language with you I said last night.
 6 Q. And learning that your clients were selling property when
 7 they told you they weren't does that change your opinion about
 8 either the EPA, the Corps of Engineers or the Department of
 9 Health?
 10 THE REPORTER: I didn't hear it, Judge.
 11 MR. TIMOTHY HOLLEMAN: Objection. Argumentative.
 12 THE COURT: Overruled.
 13 THE REPORTER: Argumentative?
 14 THE COURT: I think he said objection, argumentative
 15 Your objection is that's it's argumentative?
 16 MR. TIMOTHY HOLLEMAN: Argumentative, Your Honor.
 17 THE COURT: Objection is overruled. You may answer,
 18 Mr. Palmer.
 19 A. What I have learned today through the presentation of
 20 these contracts, which, at first blush, contravene the
 21 agreements that we had made in good faith with regulators, is a
 22 substantial disappointment.
 23 Q. I'm sorry. What was the last line you said? I got
 24 distracted.
 25 THE COURT: He said he was disappointed.

1 MS. HARRIS: Okay. I have nothing further.
 2 THE COURT: Any redirect?
 3 MR. WITTMAN: Yes, Your Honor.
 4 REDIRECT EXAMINATION
 5 BY MR. WITTMAN:
 6 Q. You answered a number of questions, Mr. Palmer, by
 7 Ms. Harris about a letter -- the October 31st letter, the one
 8 day turnaround letter. Do you see that?
 9 A. Give me a moment, Mr. Wittman, and let me find it, please.
 10 Q. I think that's the letter you had before you in which EPA
 11 had agreed to the release of certain lots dated October 31st of
 12 the year 2000.
 13 A. I believe I have it here, yes.
 14 Q. Okay. And Ms. Harris asked you some questions with
 15 respect to some lots that were sold. I think the first one she
 16 talked about was in June of 2001, AB-9. Another one was AJ-5.
 17 And none of those lots were listed on this letter, were they?
 18 A. Excuse me. Say again.
 19 Q. The lots she talked to you about that were sold in May and
 20 June of 2001 were not mentioned in this letter, were they?
 21 A. I don't see that they were.
 22 Q. Okay. And as a practical matter, between October 31st of
 23 2000 and May of 2001, other lots were released, were they not?
 24 A. Yes, they were.
 25 Q. Okay. Now, you were asked about the agreements that

1 Mr. Lucas and Big Hill Acres had with the EPA. Do you recall
 2 the questions Ms. Harris asked you about that?
 3 A. Yes.
 4 Q. And whether there was a violation of the agreement. Isn't
 5 it a fact that all of the agreements she asked you about and
 6 the agreements that you talked about today were premised on an
 7 overall resolution of this entire case?
 8 A. Yes.
 9 Q. An overall settlement? And there has been no settlement
 10 of this case, has there? That's pretty obvious?
 11 A. No, sir.
 12 Q. And without a settlement, Big Hill Acres could sell all
 13 the land it wanted to without violating Section 404 of the
 14 Clean Water Act, couldn't it?
 15 A. Without violating Section 404, that's correct.
 16 Q. Okay. Now, let's go back for just a moment. I want to
 17 talk to you about the cease and desist order of 1999, which
 18 Ms. Harris asked you about that. And that cease and desist
 19 order related to certain specific parts of Big Hill Acres, did
 20 it not?
 21 A. Yes. I noted, I believe, in response to the question that
 22 the -- the order specifically addresses certain numbered
 23 sections, being 8, 9, 10 and 15 in Township 6 South, Range 8
 24 West.
 25 Q. And Ms. Cox (sic) asked you about some specific roads.

1 She mentioned Sugargate Road, as I recall?
 2 A. Yes. Ms. Harris did.
 3 Q. And Roanoke Road?
 4 A. I think that was one.
 5 Q. Let me show you a section map, if I may. And Barksdale
 6 Road was another one; correct?
 7 A. I seem to recall that, Mr. Wittman, but I was not writing
 8 those down.
 9 Q. I'm gonna show you a section map. And we've got a large
 10 one already in evidence. But this one may be easier for you to
 11 look at. What section of land is Regale Road located in?
 12 A. Section 7, as it appears on what is depicted here.
 13 MR. WITTMAN: And Your Honor, may I exhibit this to
 14 the jury?
 15 THE COURT: You may. Is it in evidence?
 16 MR. WITTMAN: Yes, it is, Your Honor.
 17 THE COURT: Then you may.
 18 MR. WITTMAN: And for the record, it is Defense
 19 Exhibit 129. And if I could ask Mr. Palmer, if he could, to
 20 step down --
 21 THE COURT: Would you please, Mr. Palmer?
 22 MR. WITTMAN: -- Your Honor?
 23 BY MR. WITTMAN:
 24 Q. And this is Section 7 of Township 6 --
 25 A. 7/6-8.

1 Q. And that is not one of the sections mentioned in the EPA's
 2 cease and desist order, is it?
 3 A. No.
 4 Q. And the roads you were asked about -- Barksdale, that's in
 5 Section 7, is it not?
 6 A. It is.
 7 Q. And Sugargate, that's also in Section 7?
 8 A. It is.
 9 Q. And so is Regale?
 10 A. Yes, sir.
 11 Q. So none of those roads Ms. Harris talked to you about were
 12 even covered by the EPA's cease and desist order, were they?
 13 A. No, sir.
 14 Q. Thank you. You can take your seat now, please. You were
 15 asked by Ms. Harris about the extent of federally regulated
 16 waters. Do you recall being asked about that in terms of a
 17 conversation with -- or report from Palmer Hough?
 18 A. Yes, sir.
 19 Q. Is there substantial disagreement about what lands are
 20 subject to federal regulation under Section 404 of the Clean
 21 Water Act?
 22 A. Well, there is a substantial difference now between what
 23 is a wetland under long-standing scientific protocols and what
 24 is a jurisdictional wetlands.
 25 Q. So that there is a dispute, if you will, between

1 jurisdictional and nonjurisdictional, if you will, wetlands;
 2 correct?
 3 A. Yes.
 4 Q. So there are wetlands that are not subject to --
 5 A. They're wetlands either way.
 6 Q. But there are many wetlands that are not subject to
 7 regulation under the Clean Water Act, are they not?
 8 A. That's correct.
 9 Q. You were asked some questions about the Mississippi
 10 Department of Health and their involvement with the failing of
 11 the -- allegedly failing septic systems at Big Hill Acres. Do
 12 you know what involvement the Mississippi Department of Health
 13 actually had in the repair of failing septic systems at Big
 14 Hill Acres?
 15 A. No, sir. When Mr. Boggan and I struck our agreement and
 16 we sent to Mr. Lucas and Dr. Beall copies of Mr. Boggan's
 17 letter as well as Mr. Schwartz's letter, then after that we had
 18 no involvement with any particular problems or any remedies.
 19 Q. Okay. You testified -- in response to the last question
 20 Ms. Harris asked you about, you said you were disappointed
 21 about lots that were sold that you thought were not sold. Now,
 22 have you had an opportunity to talk to anyone about those lots
 23 before you were asked those questions today?
 24 A. No, sir. I was not aware of any of this until today.
 25 Q. So you were not aware of what reasons may or may not have

1 been given for the sale of those particular lots?
 2 A. No. Because I've had no conversations about it.
 3 MR. WITTMAN: Thank you. Thank you very much.
 4 THE COURT: Thank you, Mr. Palmer, sir. You are
 5 excused.
 6 THE WITNESS: Thank you, Your Honor.
 7 MR. HOLDER: Your Honor, I'd like to know if I can
 8 ask him just a couple questions? I didn't ask any on direct
 9 because I didn't feel the need to, but suddenly I do after
 10 cross-examination. It's only a couple of questions.
 11 THE COURT: All right. On your representation that
 12 you're only going to ask a couple of questions and that if they
 13 deal with redirect examination, I'll permit it. I apologize,
 14 Mr. Palmer.
 15 THE WITNESS: Thank you, Your Honor.
 16 MR. WITTMAN: Mr. Holder says he does not need this
 17 mike.
 18 MR. HOLDER: This is on? Yeah, this is on. Okay.
 19 REDIRECT EXAMINATION
 20 BY MR. HOLDER:
 21 Q. Mr. Palmer, my name is W.F. Holder. I represent M.E.
 22 Thompson. I just have a couple of questions. It is true, is
 23 it not, that you never represented nor advised M.E. Thompson
 24 directly in any way?
 25 A. Until today I had never even met Mr. Thompson.

1 Q. Okay. Or talked to him?
 2 A. No, sir.
 3 Q. And you never -- any of these letters that you've
 4 testified from about here today were never -- as far as you
 5 know, were never sent to Mr. Thompson?
 6 A. We didn't send anything to Mr. Thompson because he was not
 7 our client.
 8 MR. HOLDER: Thank you, Judge.
 9 THE COURT: Thank you, Mr. Holder. Mr. Holleman, do
 10 you have anything before I excuse Mr. Palmer finally?
 11 MR. TIMOTHY HOLLEMAN: No, I don't.
 12 THE COURT: Thank you, Mr. Palmer, sir.
 13 THE WITNESS: Thank you, Your Honor.
 14 THE COURT: Who is your next witness?
 15 MR. DEAN HOLLEMAN: Leroy Mayfield.
 16 LEROY MAYFIELD
 17 was thereupon called as a witness for and on behalf of the
 18 defendant and, having been duly sworn, testified as follows:
 19 DIRECT EXAMINATION
 20 BY MR. DEAN HOLLEMAN:
 21 Q. Could you state your full name for the record?
 22 A. Lee Michael Mayfield, Sr.
 23 Q. Could you bring that mike kind of right to below your
 24 chin? What was your name again, please?
 25 A. Lee Michael Mayfield, Sr.

1 MR. DEAN HOLLEMAN: Judge, can you hear that?
 2 THE COURT: That doesn't sound too good, does it?
 3 Try again, Mr. Mayfield.
 4 A. Lee Michael Mayfield, Sr.
 5 Q. Very good. Thank you. And Mr. Mayfield, where do you
 6 live?
 7 A. In 12517 Ponce De Leon, Ocean Springs.
 8 Q. Are you married?
 9 A. Yes, I am.
 10 Q. What is your wife's name?
 11 A. Nancy Mayfield.
 12 Q. I believe you have two children?
 13 A. Yes.
 14 Q. And what are their ages?
 15 A. Four and five months
 16 Q. And are you employed?
 17 A. Yes, I am.
 18 Q. And what is your occupation?
 19 A. I am production manager for a construction company.
 20 Q. And how long have you been in the area -- worked in the
 21 area of construction?
 22 A. About ten years.
 23 Q. And how long have you lived at your Ocean Springs address
 24 that you just gave us?
 25 A. Since April.

1 Q. April of 2004?
 2 A. Of '04, yes.
 3 Q. And tell the jury prior to April of 2004, where did you
 4 live?
 5 A. 13500 Regale Drive.
 6 Q. Is that located in the Big Hill Acres subdivision?
 7 A. Yes, it is.
 8 Q. And what is the lot number or identification number there?
 9 A. AG-10.
 10 Q. Okay. I want to ask you --
 11 MR. DEAN HOLLEMAN: Judge, may I get an exhibit,
 12 please? May I get near the --
 13 BY MR. DEAN HOLLEMAN:
 14 Q. Would you please for the jury -- do you recognize this
 15 as -- can you look at it and see if you can recognize it as the
 16 area of Big Hill Acres as far as a map would be concerned? Let
 17 me refer you to Jim Ramsey Road across the top.
 18 A. Okay.
 19 Q. This would be -- are you familiar with the power line out
 20 there?
 21 A. Yeah.
 22 Q. And I'm gonna try to direct you to an area here.
 23 A. Regale. There's Sugagate right there.
 24 Q. You're pointing on the left side of this photograph, which
 25 is D-129, on the left side of the photograph. Would you point